

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
DEL RIO DIVISION

UNITED STATES OF AMERICA       )  
  )  
  )       DR-10-CR-361(02) AM  
VS.                                    )  
  )       DEL RIO, TEXAS  
  )       MARCH 15, 2011  
LUIS ROEL CASTANEDA            )

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**TRIAL ON THE MERITS**

**BEFORE THE HONORABLE ALIA MOSES  
UNITED STATES DISTRICT JUDGE**

**Volume 3**

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**E X H I B I T S****GOVERNMENT  
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1 (MARCH 15, 2011, OPEN COURT.)

2 THE COURT: We are on the record in DR-10-CR-361;  
3 United States of America vs. Defendant Number 2, Luis Roel  
4 Castaneda. Let me go ahead and have announcements again.

03:43 5 MR. GYIRES: Marton Gyires and Michael Galdo for the  
6 United States. The government is ready.

7 MR. MARTINEZ: Your Honor, Ralph Martinez for Mr.  
8 Castaneda. The defense is ready.

9 THE COURT: Okay. All right. The jury is back; is  
03:43 10 that correct?

11 COURT SECURITY OFFICER: Yes.

12 THE COURT: All right. Let's bring them in.

13 (JURY IN.)

14 THE COURT: Go ahead.

03:44 15 COURTROOM DEPUTY: Please raise your right hand.

16 (OATH ADMINISTERED.)

17 THE COURT: The first row?

18 JURY PANEL: Yes. Yes. Yes. Yes. Yes. Yes. Yes.

19 THE COURT: Okay. The second row?

03:44 20 JURY PANEL: Yes. Yes. Yes. Yes. Yes. Yes.

21 THE COURT: Okay. Everybody has answered. Okay.  
22 Let me begin by -- you may be seated. Let me begin by giving  
23 you some preliminary instructions:

24 Members of the jury, you are now the jury in the case, and  
03:45 25 I want to take a few minutes to tell you something about your

1 duty as jurors and to give you some instructions. At the end  
2 of the trial I will give you more detailed instructions. You  
3 must follow all of my instructions in doing your job as jurors.

4 This criminal case has been brought by the United States  
03:45 5 government. I may sometimes refer to the government as the  
6 prosecution. The government is represented at this trial by  
7 Assistant United States Attorneys Marton Gyires and Michael  
8 Galdo. The Defendant Luis Roel Castaneda is represented by his  
9 attorney Rafael Martinez.

03:45 10 The defendant has been charged by the government with  
11 criminal violations of federal law, that is, conspiracy to  
12 import into the United States from Mexico five kilograms or  
13 more of a mixture or substance containing a detectable amount  
14 of cocaine and the conspiracy to possess with intent to  
03:45 15 distribute five kilograms or more of a mixture or substance  
16 containing a detectible amount of cocaine.

17 The charges against the defendant are contained in the  
18 indictment. The indictment is simply the description of the  
19 charges made by the government against the defendant; but it is  
03:46 20 not evidence that the defendant committed any crime. The  
21 defendant pleaded not guilty to the charges. A defendant is  
22 presumed innocent and may not be found guilty by you unless all  
23 12 of you unanimously find that the government has proved the  
24 defendant's guilt beyond a reasonable doubt.

03:46 25 The first step in the trial will be the opening

1 statements. The government in its opening statement will tell  
2 you about the evidence which it intends to put before you so  
3 that you will have an idea of what the government's case is  
4 going to be.

03:46 5 Just as the indictment is not evidence, neither is the  
6 opening statement evidence. Its purpose is only to help you  
7 understand what the evidence will be and what the government  
8 will try to prove.

9 After the government's opening statement the defendant's  
03:46 10 attorney may make an opening statement. At this point in the  
11 trial no evidence has been offered by either side. Next the  
12 government will offer evidence that it claims will support the  
13 charges against the defendant. The government's evidence may  
14 consist of the testimony of witnesses as well as documents and  
03:46 15 exhibits.

16 Some of you have probably heard the term "circumstantial  
17 evidence" and "direct evidence." Do not be concerned with  
18 these terms. You are to consider all of the evidence given in  
19 this trial.

03:47 20 After the government's evidence the defendant's attorney  
21 may present evidence on the defendant's behalf; but he is not  
22 required to do so. I remind you that the defendant is presumed  
23 innocent and that the government must prove the defendant's  
24 guilt beyond a reasonable doubt. The defendant does not have  
03:47 25 to prove his sentence. If the defendant decides to present

1 evidence however, the government may introduce rebuttal  
2 evidence.

3 After you have heard all of the evidence on both sides the  
4 government and the defense will each be given time for their  
03:47 5 final arguments. I just told you that the opening statements  
6 by the lawyers are not evidence. The same applies to closing  
7 arguments. They are not evidence either; but you should pay  
8 close attention to them.

9 The final part of the trial occurs when I instruct you  
03:47 10 about the rules of law which you are to use in reaching your  
11 verdicts. After hearing my instructions you will leave the  
12 courtroom together to make your decisions. Your deliberations  
13 will be secret. You will never have to explain your verdicts  
14 to anyone.

03:48 15 Now that I have described the trial itself, let me explain  
16 the jobs that you and I are to perform during the trial. I  
17 will decide which rules of law apply to this conveys in  
18 response to questions or objections raised by the attorneys as  
19 we go along and also in the final instructions given to you  
03:48 20 after the evidence and arguments are completed.

21 You must follow the law as I explain it to you, whether  
22 you agree with it or not. You and you alone are the judges of  
23 the facts; therefore, you should give careful attention to the  
24 testimony and exhibits, because based upon this evidence you  
03:48 25 will decide whether the government has proved beyond a



1 reasonable doubt that the defendant has committed the crimes  
2 charged in the indictment. You must base your decisions only  
3 on the evidence in the case and my instructions about the law.  
4 You will have the exhibits with you when you deliberate.

03:48 5 It will be up to you to decide which witnesses to believe,  
6 which witnesses not to believe and how much of any witness's  
7 testimony to accept or reject. I will give you some guidelines  
8 for determining the credibility of the witnesses at the end of  
9 the case.

03:49 10 You may not take notes during the course of the trial.  
11 There are several reasons for this. It is difficult to take  
12 notes and at the same time pay attention to what a witness is  
13 saying. Furthermore, in a group the size of yours certain  
14 persons will take better notes than others, and there is the  
03:49 15 risk that the jurors who take good notes will depend upon the  
16 jurors -- excuse me -- the jurors who do not take good notes  
17 will depend upon the jurors who do take good notes. The jury  
18 system depends upon all 12 jurors paying close attention and  
19 arriving at a unanimous decision. I believe that the jury  
03:49 20 system works better when the jurors do not take notes.

21 You will note that we do have an official court reporter  
22 making a record of the trial. However, we will not have  
23 typewritten transcripts of this record available for your use  
24 in reaching your decisions in this case.

03:49 25 I'm having trouble speaking today. Excuse me.

1           The defendant is charged with conspiracy to import into  
2           the United States from Mexico five kilograms or more of a  
3           mixture or substance containing a detectible amount of cocaine  
4           in Count One. In Count Two the defendant is charged with  
03:50 5           conspiracy to possess with intent to distribute five kilograms  
6           or more of a mixture or substance containing a detectible  
7           amount of cocaine.

8           I will give you detailed instructions on the law at the  
9           end of the case and those instructions will control your  
03:50 10          deliberations and your decisions; but in order to help you  
11          follow the evidence I will now give you a brief summary of the  
12          elements of the offenses which the government must prove to  
13          make its case.

14          A "conspiracy" is an agreement between two or more persons  
03:50 15          joined together to accomplish some unlawful purpose. It is a  
16          kind of partnership in crime in which each member becomes the  
17          agent of every other member.

18          To "possess with intent to distribute" simply means to  
19          possess with the intent to deliver or transfer possession of a  
03:50 20          controlled substance to another person with or without any  
21          financial interest in the transaction.

22          "Importation" means to bring into the United States from a  
23          place outside of the United States.

24          During the course of the trial do not talk with any of the  
03:50 25          witnesses or with the defendant or with any of the attorneys in

1 the case. Please do not talk with them about any subject at  
2 all. You may be unaware of the identity of everyone connected  
3 with the case; therefore, in order to avoid even the appearance  
4 of impropriety, do not engage in any conversation with anyone  
03:51 5 in or about the courtroom or the courthouse. It is best that  
6 you remain in the jury room during breaks in the trial and not  
7 linger in the halls.

8 I will instruct the attorneys to say nothing to you. So  
9 if you see them in the hallway and they appear to ignore you,  
03:51 10 do not think that they are being rude. They are just following  
11 my instructions.

12 In addition, during the course of the trial do not talk  
13 about the trial with anyone else, not your family, not your  
14 friends, not the people with whom you work. All you should say  
03:51 15 is that you were selected to be on the jury panel. Please do  
16 not even give the names of the parties or the type of the case.  
17 This is to avoid the situation that someone may give you  
18 information or an opinion as to this case.

19 And I'm going to add a caveat: Please do not look  
03:51 20 anything up on the internet regarding the law or the facts of  
21 this particular case either.

22 Also do not discuss this case among yourselves until I  
23 have instructed you on the law and you have gone to the jury  
24 room to make your decisions at the end of the trial. Otherwise  
03:52 25 without realizing it you may start forming opinions before the

1 trial is over. It is important that you wait until all of the  
2 evidence is received and you have heard my instructions on the  
3 rules of law before you deliberate among yourselves.

4 Let me add that during the course of the trial you will  
03:52 5 receive all of the evidence you properly may consider to decide  
6 this case. Because of this, do not attempt to gather any  
7 information on your own which you think might be helpful, do  
8 not engage in any outside reading on the case, do not attempt  
9 to visit any places mentioned in the case, and do not in any  
03:52 10 other way try to learn about the case outside of the courtroom.

11 Now that the trial has begun, you must not read about it  
12 in the newspapers or watch or listen to television or radio  
13 reports of what is happening here. The reason for these rules,  
14 as I am certain you will understand, is that your decisions in  
03:52 15 this case must be made solely on the evidence presented at the  
16 trial.

17 At times during the trial a lawyer may make an objection  
18 to a question asked by another lawyer or to an answer given by  
19 a witness. This simply means that the lawyer is requesting  
03:53 20 that I make a decision on a particular rule of law. Do not  
21 draw any conclusions from such objections or my rulings on  
22 those objections. These relate only to the legal questions  
23 that I must determine and should not influence your thinking.

24 If I sustain an objection to a question, the witness may  
03:53 25 not answer it. Do not attempt to guess what answer might have

1 been given had I allowed the question to be answered.  
2 Similarly, if I tell you not to consider a particular  
3 statement, you should put that statement out of your mind and  
4 you may not refer to that statement in your later  
03:53 5 deliberations. If an objection is overruled, treat the answer  
6 like any other.

7 During the course of the trial I may ask a question of a  
8 witness. If I do, this does not indicate that I have any  
9 opinions about the facts of the case. Nothing I say or do  
03:53 10 should lead you to believe that I have any opinion about the  
11 facts nor be taken as indicating what your verdicts should be.

12 During the trial I may have to interrupt the proceedings  
13 to confer with the attorneys about the rules of law which  
14 should apply here. Sometimes we will talk here at the bench.  
03:54 15 Some of these conferences may take time, so as a convenience to  
16 you I will excuse you from the courtroom. I will try to avoid  
17 such interruptions as much as possible and will try to keep  
18 them short; but please be patient even if the trial seems to be  
19 moving slowly. Conferences outside of your presence are  
03:54 20 sometimes unavoidable.

21 Finally, there are three basic rules about a criminal case  
22 which you should keep in mind. First, the defendant is  
23 presumed innocent until proven guilty. The indictment against  
24 the defendant brought by the government is only an accusation,  
03:54 25 nothing more. It is not proof of guilt or anything else. The

1 defendant therefore starts out with a clean slate.

2 Second, the burden of proof is on the government until the  
3 very end of the case. The defendant has no burden to prove his  
4 innocence or present any evidence or to testify. Since the  
03:54 5 defendant has a right to remain silent, the law prohibits you  
6 in arriving at your verdicts from considering that the  
7 defendant may not have testified.

8 Third, the government must prove the defendant's guilt  
9 beyond a reasonable doubt. I will give you further  
03:55 10 instructions on this point later; but bear in mind that in this  
11 respect a criminal case is different from a civil case.

12 Now some administrative matters: The air conditioning in  
13 the courtroom or the temperature is very difficult to control  
14 for whatever reason here. It is either going to be too hot or  
03:55 15 it's going to be too cold. So if you get uncomfortable, raise  
16 your hand, and we will try to work with the temperature. And  
17 you have the horrible situation of you are sitting behind. You  
18 have got some vents pointing over your heads right now and you  
19 have got the ones across the courtroom. So if at any time you  
03:55 20 are uncomfortable, just raise a hand, and we will work with the  
21 thermostat and see if we can fix it.

22 Number two, if you need a break, we will try to take a  
23 break as soon as possible depending on where we are with the  
24 witness. So be sure and let my know if you need a break.

03:55 25 And, three, I will be working here at the bench. You may

1 not see me because I may be behind the screens here; but I will  
2 be paying attention to everything that is happening in the  
3 courtroom.

4 Mr. Gyires, are you starting off with the opening  
03:56 5 statement?

6 MR. GYIRES: Mr. Galdo is, Your Honor.

7 THE COURT: Mr. Galdo, you may proceed.

8 MR. GALDO: Thank you, Your Honor. May it please the  
9 Court. Counsel, ladies and gentlemen, it is early 2008. A  
03:56 10 fishing boat takes off from Mexico and begins to make its way  
11 across Lake Amistad. From the outside it looks like any of the  
12 hundreds of fishing boats you can find around Del Rio; but this  
13 boat was different.

14 It's different because of the cargo it was carrying.  
03:56 15 Inside a secret compartment within the body of that boat was  
16 over 140 kilograms of cocaine. That's over 300 pounds. When  
17 broken up into small doses and sold on the streets of a U.S.  
18 city it could be worth over 14 million dollars.

19 Now that boat reaches a dock just outside of Del Rio near  
03:56 20 Highway 90. It was picked up and taken to a warehouse right  
21 off Highway 90 just a little bit, about a mile down the road  
22 from that dock, a warehouse that had blackened windows, a  
23 warehouse that was filled with tools and supplies that could  
24 transport that cocaine outside of that boat and ready it for  
03:57 25 its next, the next leg of its journey.

1 My name is Michael Galdo and with me is Marton Gyires; and  
2 as a the judge said, we're the prosecutors in this case. We  
3 are both Assistant United States Attorneys here in Del Rio; and  
4 it is our job to present the evidence to you, evidence that  
03:57 5 will prove beyond a reasonable doubt that that man, Luis  
6 Castaneda, also known as "Pajaro" is guilty beyond a reasonable  
7 doubt, guilty of conspiring or agreeing with other people to  
8 import cocaine into the United States and guilty of possessing  
9 cocaine, of conspiring to possess cocaine with the intent to  
03:57 10 distribute it (indicating).

11 Now as I said, the conspiracy didn't import the cocaine  
12 just to bring it to Del Rio. DEA Agent William Meholif will  
13 testify the cocaine value increases the further away from the  
14 border it goes.

03:58 15 The next step for that cocaine was to go to Houston; but  
16 the conspiracy couldn't get it there by boat, so they had to  
17 transfer it. And what they did is they transferred it to  
18 flatbed trailers, 18-wheeler trucks. And I'm not talking about  
19 a big container you see going down the highway on the top of  
03:58 20 the truck.

21 I'm talking about the flatbed trailer itself. There is a  
22 hollow area towards the front of those flatbed trailer where it  
23 attaches to the trucks. They would remove -- it is difficult  
24 to get to; but you can remove portions of the bottom of the  
03:58 25 flatbed trailer and in there there is a hollow area. And they



1 would fill the cocaine in that area in little portable bundles  
2 that were taped or taped closed and they would spray it with  
3 dog repellant spray so that narcotics dogs couldn't detect it.  
4 And then it would be sealed tight and pickup trucks -- and Mac  
03:58 5 trucks rather would come and pick it up.

6 The conspiracy had recruited multiple truck drivers  
7 including and Eduardo Barrientos and an Aurelio Cortinas.

8 A man by the name of Eladio Pena, also known as "Chaparro"  
9 was in charge of not only putting the drugs inside the trailer,  
03:59 10 but also monitoring their progress as they traveled from Del  
11 Rio to Houston.

12 It was in Houston that "Pajaro," Mr. Castaneda's role  
13 kicked in. He established the safe area for the truck to  
14 arrive and he along with Chaparro would unload the cocaine, and  
03:59 15 then once that hollowed-out space was emptied they would fill  
16 it with bundles of cash.

17 So you have cocaine coming into the United States and  
18 money flowing out. Those flatbed trailer trucks would then be  
19 driven back to Del Rio and sometimes to Roma, Texas, which is  
03:59 20 small border town in South Texas.

21 Importing cocaine and distributing it in the United States  
22 is a business. No one brings cocaine in and gives it away out  
23 of the goodness of their heart. They do it to make money, lots  
24 of money. And just like a business, there's different jobs  
04:00 25 that need to be done. Someone needed to hide the cocaine in

1 the boat. Somebody needed to drive the boat over. Somebody  
2 needed to keep the warehouse running. Someone needed to hide  
3 the cocaine in the trailers and monitor it.

4 It was Pajaro, Mr. Castaneda's job to establish that safe  
04:00 5 area in Houston and to load the trailers with cash.

6 This was a business and business was good; but all that  
7 changed in February 2008. See, law enforcement were watching  
8 that warehouse. They saw a trailer pull out attached to a  
9 tractor/truck. That truck was stopped.

04:00 10 You are going to hear from Trooper Luna who was there at  
11 that stop. He is going to tell you about the search of that  
12 flatbed trailer, about the hundreds of pounds of cocaine that  
13 were removed from that flatbed trailer.

14 You are also going to hear from Texas Ranger Roger Dixon.  
04:01 15 After that flatbed trailer was searched law enforcement went  
16 back to that warehouse and they searched the warehouse, and  
17 they found a boat and inside that boat was a secret compartment  
18 and inside that secret compartment was an additional, was  
19 another large amount of cocaine, around 300 pounds. He's going  
04:01 20 to take the stand and tell you about that search.

21 Additionally, ladies and gentlemen, you're going to get a  
22 behind-the-scenes view of this conspiracy, an inside look. You  
23 are going to hear from two of the truck drivers, Mr. Barrientos  
24 and Mr. Cortinas. They are going to take the stand.

04:01 25 Both men drove numerous truckloads of cocaine from Del Rio

1 to Houston between 2007 and 2008. Both men are going to tell  
2 you about Eladio Pena, Chaparro's role in Del Rio; and  
3 importantly for this case both men are going to tell you that  
4 Castaneda set up that safe area in Houston and that they saw  
04:02 5 him there and that he unloaded, helped unload the cocaine and  
6 helped load those trailers again with cash.

7 But the evidence that is going to be presented to you  
8 means that you won't just have to take their word for it.  
9 Mr. Cortinas was actually the man driving the tractor that was  
04:02 10 stopped in February 2008. He was obviously part of a cocaine  
11 trafficking conspiracy. When he was caught he had a cell phone  
12 on him, and that cell phone has contacts including a Chaparro  
13 and Pajaro. Pajaro, Mr. Castaneda had called that phone  
14 numerous times the day Mr. Cortinas was stopped. You are going  
04:02 15 to see those phone records and you're going to hear testimony  
16 about that.

17 Additionally both Mr. Cortinas and Mr. Barrientos  
18 identified the defendant in a photo lineup as the man named  
19 Pajaro who they dealt with in Houston.

04:02 20 Finally, ladies and gentlemen, the defendant was  
21 previously convicted in federal court of possessing narcotics  
22 with intent to distribute them. In 2003 in the Southern  
23 District of Texas he was convicted for smuggling narcotics, and  
24 you can infer from that conviction the defendant's intent and  
04:03 25 knowledge in this case.

1 At the conclusion of this trial after you have heard all  
2 of the evidence, after you have seen the photographs, after you  
3 have seen the dozens of bundles of cocaine, after you have  
4 heard from the two members of the conspiracy who are going to  
04:03 5 take the stand and tell you that Mr. Castaneda was the man in  
6 Houston, after you have heard about his prior conviction, after  
7 all of that we are going to come back to this spot and we are  
8 going to ask you to return the verdict that justice demands,  
9 guilty on all counts.

04:03 10 THE COURT: Mr. Martinez.

11 MR. MARTINEZ: May it please the Honorable Court, the  
12 members of the government, Mr. Castaneda. The government is  
13 going to ask you at the close of this case to remove the veil  
14 that is the presumption of innocence, and they are going to  
04:03 15 tell you that they have proved the case beyond a reasonable  
16 doubt. But ultimately every word or almost every word, every  
17 dot, every period, every breath this gentleman just made  
18 depends on the word of two witnesses, a guy named Barrientos  
19 and a guy named Cortinas. That's really all they have.

04:04 20 Now they are believed, that might be enough; but I'm going  
21 to tell you that the evidence is going to show that they should  
22 not be believed. And if you agree with me, there is no way the  
23 veil of presumption of innocence can be removed, and reasonable  
24 doubt will be basically in neon lights in this courtroom.

04:04 25 Barrientos on May 12, 2009, was stopped at Eagle Pass.

1 His wife was the driver, Teresa Barrientos, and they had 12  
2 kilos of coke in a hidden compartment. When the wife whose  
3 knowledge and participation was established starts getting heat  
4 Mr. Barrientos decides to talk to the officers implicating  
04:05 5 himself and his wife.

6 Cortinas was stopped in Brackettville in possession of  
7 163, almost 164 kilos. He starts to talk. He's alone and he  
8 says that he was involved and took many trips up and was  
9 usually paid \$2000 to \$4,000 per trip. So what you have here  
04:05 10 is the word of two people that were caught red handed

11 There's no eye witness -- there is no need for eye witness  
12 testimony, informant testimony, accomplice testimony, prints,  
13 logs, cell phones, nothing. The evidence is right there.

14 Basically the evidence is going to show their hands were  
04:05 15 caught in the cookie jar. At that point both men face 10 to  
16 life. Barrientos is going to be sentenced severely based on 12  
17 kilos of coke and Cortinas even more severely based on 164  
18 kilograms.

19 At that point the evidence is going to show that they  
04:06 20 started talking even more and they took advantage of a system  
21 the federal courts created that encourages cooperation by  
22 people who are known criminals. Many times it is a good system  
23 and it helps law enforcement detect other criminals; but the  
24 problem is that many times dealing with these people it is hard  
04:06 25 to control.

1 MR. GALDO: Objection, Your Honor, argumentative.

2 THE COURT: Be careful, Mr. Martinez.

3 MR. MARTINEZ: The evidence is going to show that  
4 both men are facing 10 to life.

04:07 5 THE COURT: Be careful with the punishment range too,  
6 Mr. Martinez. Go ahead.

7 MR. MARTINEZ: He decided in the case of Barrientos  
8 to take advantage of a reduction in sentence that comes with  
9 his cooperation. And while he's testifying Barrientos expects  
04:07 10 even more of a reduction the evidence is going to show.

11 Cortinas has not received a reduction, but expects a  
12 reduction. And throughout this system not only is there an  
13 expectation for a reduction that motivates the testimony. The  
14 evidence is going to show that the government makes the  
04:07 15 decision as to whether or not they get the reduction, and the  
16 government evaluates and the government controls whether or not  
17 they get the reduction.

18 MR. GALDO: Objection, Your Honor. It is up to the  
19 Court to decide.

04:08 20 THE COURT: That will come out. This is opening. Go  
21 ahead, Mr. Martinez.

22 MR. MARTINEZ: If the government doesn't file the  
23 reductions, for all intents and purposes it is pretty hard to  
24 get it, the evidence is going to show.

04:08 25 Now the issue is going to be whether or not after viewing

1 these people and determining from their demeanor whether their  
2 testimony is consistent within themselves or with each other,  
3 whether or not when they first talked did they say anything  
4 about my client as opposed to now, whether or not they are  
04:08 5 talking because they want their reduction, whether or not they  
6 can even be trusted knowing that they were caught red handed,  
7 is that going to be enough to establish that there is no longer  
8 reasonable doubt to meet the government's burden of proof? And  
9 on both witnesses, with both witnesses that is really how the  
04:09 10 government is going to prove my client's involvement.

11 There is going to be other evidence. There is going to be  
12 the phone record; but they are not going to have any evidence,  
13 the evidence is not going to show any conversations that took  
14 place, who even made the calls. So you'll have calls made on  
04:09 15 the day. But they knew each other. The evidence is going to  
16 show these people making calls knew each other; but you are not  
17 going to know what they said, when they said it or anything  
18 else. There are not going to be any witnesses other than those  
19 witness, independent witnesses, no prints of my client, no  
04:10 20 seizures where he was caught with drugs.

21 And in the end you are going to decide. The evidence is  
22 going to be such that it will be your decision to evaluate and  
23 decide did the government meet its burden of proof by providing  
24 basically these two witnesses and if they removed the  
04:10 25 presumption of innocence based on their word? Thank you.

1 THE COURT: Okay. Mr. Gyires and Mr. Galdo, call  
2 your first witness.

3 MR. GYIRES: The government calls Esteban Luna.

4 (OATH ADMINISTERED.)

04:11 5 THE WITNESS: I do.

6 MR. GYIRES: May I proceed, Your Honor?

7 THE COURT: You may.

8 DIRECT EXAMINATION

9 Q. (BY MR. GYIRES) Would you please introduce yourself to  
04:11 10 the jury.

11 A. My name is Esteban Luna. I'm from Eagle Pass. I'm a  
12 trooper with DPS eight years.

13 Q. How long have you been with DPS?

14 A. Eight years.

04:11 15 Q. In what capacity?

16 A. I'm in the Commercial Vehicle Enforcement Section. We  
17 inspect 18-wheelers and commercial vehicles.

18 Q. Have you been that for the full eight years?

19 A. Since I graduated from the academy.

04:12 20 Q. Can you briefly describe your day-to-day duties on that  
21 job?

22 A. Day-to-day we enforce state law and federal regulations,  
23 which what we do is basically inspect commercial vehicles and  
24 check for equipment violation, log book violation, driver  
04:12 25 qualifications, make sure they keep the trucks in good



1 standing.

2 Q. Were you working in that capacity on February 24th, 2008?

3 A. Yes, sir. We were working an operation.

04:12 4 Q. Did you come into contact on that day with an individual  
5 named Aurelio Cortinas?

6 A. Yes, I did.

7 Q. Can you please describe how that contact was initiated?

8 A. We were working the operation in Kinney and Val Verde  
9 County that day, and I was up -- I don't know the specific  
04:12 10 time; but we were working between Kinney and Val Verde, and I  
11 was stationery that day in my patrol unit, and then when we saw  
12 the 18 -- when I saw the 18-wheeler pass by or come through we  
13 conducted or I conducted a traffic stop.

14 Q. Let me pause you for a second and show you a photograph  
04:13 15 marked Government's Exhibit 11.

16 THE COURT: Let me make sure that -- okay. Try that  
17 now (indicating).

18 MR. GYIRES: Has it been published, Your Honor?

19 THE COURT: It should be. The screens are not muted,  
04:13 20 so it should be. I know the witness can see it.

21 THE WITNESS: I can see it.

22 THE COURT: I think everybody else can too.

23 MR. GYIRES: Okay.

24 Q. (BY MR. GYIRES) Do you recognize this (indicating)?

04:13 25 A. Yes, sir, I do.

1 Q. Is that the tractor and trailer that you saw going by that  
2 day?

3 A. Yes, sir, it is.

4 Q. Let me show you another photograph. This one is marked  
04:13 5 Government's Exhibit 12. It is just another photograph of that  
6 tractor. Do you recognize that (indicating)?

7 A. Yes, sir, I do recognize it.

8 Q. Is that the same tractor?

9 A. That's the same tractor.

04:13 10 Q. What does it say there on the side of it?

11 A. Cortinas Trucking.

12 Q. Okay. What happened after you saw it pass you?

13 A. As I saw it pass me we -- or "we." I conducted a traffic  
14 stop on that truck, and I approached the driver and advised him  
04:14 15 that I was going to conduct a safety inspection on that truck  
16 and that semi-trailer.

17 Q. And again, the driver was named Aurelio Cortinas?

18 A. Yes, sir.

19 Q. What happened after you told him that?

04:14 20 A. He complied, as they normally do. Normally all truck  
21 drivers do comply once you advise them that you are going to do  
22 a level -- in this case it was a Level 2 inspection, safety  
23 inspection.

24 Q. What does that mean?

04:14 25 A. That means we are going to do a walk-around to the

1 trailer, the truck/tractor and semi-trailer and look for, you  
2 know, maybe a flat tire, anything having to do with safety  
3 equipment.

4 Q. What did you notice, if anything?

04:14 5 A. On this truck as I was doing my inspection and I was  
6 walking around it I mean I couldn't find anything on this  
7 truck. The only thing that I did see on this truck while I was  
8 inspecting it was the DOT number on the side where it says  
9 Cortinas Trucking normally you would have a TXDOT. You know,  
04:15 10 in front of DOT it would have a TX or a USDOT. In this case it  
11 didn't have either/or.

12 Q. So what did you do next?

13 A. So as I walked around and made a complete safety  
14 inspection I advised the driver that I was going to do an  
04:15 15 inspection inside the cab area in the sleeper berth inside the  
16 cab. And what we do there is we look for alcohol, radar  
17 detectors; and that is part of the regulations, safety  
18 regulations, federal safety regulations. And I did. He  
19 agreed, and I just put him to the side of the road on the other  
04:15 20 side of the vehicle; and I conducted my inspection of the  
21 interior of the truck and it was definitely clean. I mean I  
22 couldn't find any defects or anything, any contraband as far as  
23 illegal equipment.

24 Q. What happened next?

04:15 25 A. As I conducted that I approached and interviewed the

1 driver, Mr. Cortinas and asked him where he was going, what was  
2 he picking up?

3 Q. What did he say?

4 A. He advised that he was headed to San Antonio to pick up a  
04:16 5 load of clothing. And I asked who his contact or who, where he  
6 was picking up. He had no clue.

7 Q. What else did he say?

8 A. So he said that he was supposed to pick up clothing that  
9 day in San Antonio. And, you know, I had never seen anybody  
04:16 10 pick up clothing in a flatbed trailer in the years that I have  
11 done this. It doesn't happen.

12 Q. What did you do next?

13 A. I asked him who his contact was. He had mentioned a name.  
14 I don't recall the name that he was supposed to contact. He  
04:16 15 brought out a name. I think it was a Mr. Gonzalez that was his  
16 contact person once he arrived at San Antonio.

17 But so I continued my interview with him, and I asked for  
18 his log book, and I noticed in his log book that I mean the guy  
19 hadn't worked in the past two days. And if you have a truck  
04:17 20 like this he did, this was his truck according to what he told  
21 me, you have got to put that truck on the road to make money.  
22 If you don't have it on the road, you are losing money really.

23 Q. So what did you do next?

24 A. I looked at the log book and started questioning him on  
04:17 25 that and asked him what he had done the prior two days, and he

1 said that he hadn't had any work. And I said "Where was the  
2 truck last night?" He advised that the truck was left here in  
3 Eagle Pass and he spent the night -- the truck was parked here  
4 in Del Rio and he spent the night in Eagle Pass. And I asked  
04:17 5 "How did you get to Eagle Pass?" He said some friend picked  
6 him up in Del Rio and took him back to Eagle Pass. It didn't  
7 make sense to me. I asked him why and he said that it was too  
8 much, it was a hassle to do that in your log book. And it is  
9 not really a hassle.

04:17 10 Q. Let me back up a little bit. You said you walked --  
11 before you searched the inside of the tractor you also walked  
12 around the whole trailer?

13 A. Correct.

14 Q. Did you also look underneath the trailer?

04:17 15 A. Correct.

16 Q. What did you see?

17 A. I forgot about that. Yes, as I walked at the left side of  
18 the truck or the trailer, the semi-trailer I don't know if I  
19 can explain it. Can I explain the kingpin and the fifth wheel?

04:18 20 Q. Yes. I can show you some photographs. But go ahead and  
21 explain what that is. What is a fifth wheel?

22 A. A fifth wheel is where you have your truck/tractor which  
23 the rear part, and it connects to the trailer and it has a  
24 kingpin on it. It is a bolt that connects into this and locks  
04:18 25 into place.

1           So when I was looking and doing my inspection on the fifth  
2 wheel there was a bunch of new bolts, or at least I saw two new  
3 bolts on the left side of the fifth wheel.

4           Q.    Let me stop you for one second. On this photo marked  
04:18 5   Government's Exhibit 12 in what are is the fifth wheel and the  
6 kingpin?

7           A.    The fifth wheel would be on the left side, on the left  
8 side; but you can't see. I mean you will see. I can't see the  
9 fifth wheel from here; but it is right where the trailer  
04:18 10 attaches to the truck/tractor.

11          Q.    So towards the front of the trailer?

12          A.    Right, the very front of the truck.

13          Q.    Okay. So let me show you a picture of Government's 19.  
14 And tell me what this is. It is a close-up, so you can't tell  
04:19 15 where it is on the trailer. But what is that (indicating)?

16          A.    That would be your kingpin. That's what locks into the  
17 fifth wheel and it will stay locked unless you disengage it.

18          Q.    Is that attached to the trailer or the tractor?

19          A.    That is attached to the truck/tractor.

04:19 20          Q.    Okay. And what did you notice on there?

21          A.    I didn't notice anything on this; but if you notice on  
22 there's a picture here on the fifth wheel, you will notice  
23 there are new bolts that are in place or installed in this  
24 fifth wheel and the truck (indicating). I mean I asked him  
04:19 25 about that, and he when I asked him about the new bolts on the

1 fifth wheel he advised that he had done some work on it a  
2 couple of months ago in Eagle Pass. And I did ask him where he  
3 did it and he mentioned somewhere, Bravo Automotive or  
4 something like that.

04:19 5 Q. I'm showing you Government's Exhibit 14. Do you recognize  
6 that at all (indicating)?

7 A. That would be your fifth wheel.

8 Q. Okay. So what did you do next after you asked him about  
9 that?

04:20 10 A. As I started, I mean, I don't know if the jury can see it;  
11 but, you know, there are some new bolts. Everything is black;  
12 but if you look on the bottom, there are some silver bolts that  
13 are brand new that were still painted with blue.

14 Q. You can actually if you touch the screen, it should do  
04:20 15 sort of a "John Madden" thing.

16 A. No.

17 Q. It is not working?

18 THE COURT: You have to push hard. You have got to  
19 push hard.

04:20 20 THE WITNESS: Hard?

21 THE COURT: Yes.

22 THE WITNESS: Right there, there it is. Did you-all  
23 see it right there (indicating)?

24 JURY PANEL: (Nods affirmatively.)

04:20 25 THE WITNESS: That bolt right there on top was a

1 brand-new bolt, and there was another one on the other side  
2 that you can't. I mean, if you are there, you can see it  
3 painted freshly blue.

4 THE COURT: What you are seeing up there is what you  
04:20 5 have in front of you.

6 THE WITNESS: Okay.

7 THE COURT: Try that again. I think I just tried to  
8 change the color --

9 THE WITNESS: Okay.

04:20 10 THE COURT: -- so you can see it better.

11 THE WITNESS: Right up here (indicating).

12 THE COURT: Yes. Yes. There you go. See, it  
13 changed the color.

14 THE WITNESS: Right there, that bolt (indicating).  
04:20 15 Normally on all just about the majority of your fifth wheels  
16 and kingpin you should have grease, oil, gunk where you can't  
17 even see that because you need for it to slide on top of that.  
18 It has got to be greased and oiled so it will slide smoothly.  
19 If you don't have it like that, it will cause damage.

04:21 20 And everything there was new, so it was kind of odd being  
21 that the truck was not a new truck. And when I questioned him  
22 about that he said that it was done in Eagle Pass. And so I  
23 continued to ask him questions about that, and it just didn't  
24 make sense to me.

04:21 25 Q. (BY MR. GYIRES) Okay. Let me --



1 A. If you look --

2 Q. Go ahead.

3 A. -- on the top right -- I can't really see on this. But  
4 right here, somewhere here you'll see finger marks, fingerprint  
04:21 5 marks (indicating). Somebody had been under there, and I don't  
6 know what they were doing down there. So we started -- I  
7 started asking him questions about that, and he said that it  
8 was a mechanic; but I don't see how a mechanic is going to put  
9 his fingerprints on the trailer if that is not what was worked  
04:22 10 on. What was worked on was the truck/tractor.

11 Q. Let's me ask you something. Is normally is the  
12 kingpin -- well, let me show you a photograph marked  
13 Government's Exhibit 18. Make sure --

14 THE COURT: Let me clear the annotations, Mr. Gyires.  
04:22 15 There we go (indicating).

16 MR. GYIRES: Thank you, Your Honor.

17 Q. (BY MR. GYIRES) This is Government's Exhibit 18. What is  
18 that again (indicating)?

19 A. This is the kingpin.

04:22 20 Q. Is that normally ever removed once it is installed in the  
21 trailer?

22 A. You know, you can't remove. Once that connects to the  
23 fifth wheel you can't remove it. The only way you can remove  
24 that is if you detach the truck/tractor and semi-trailer, then  
04:22 25 you can remove that; but you need a special tool to remove that

1 kingpin right there.

2 Q. Is it normally -- explain why is it that normally it is  
3 all greased up?

4 A. That will make it slide and lock into place easier, that  
04:22 5 you know, being it is like rubbing metal against metal, so you  
6 need some grease to, you know, smooth it up. So it has to have  
7 it. If not, you are going to cause damage to all that fifth  
8 wheel.

9 Q. Is there normally a reason to remove that?

04:23 10 A. No.

11 Q. Okay. What happened next?

12 A. After I spoke with the gentleman, you know, there were  
13 several inconsistencies with, you know, as far as where he was  
14 going and the trip that he made to Eagle Pass and leaving his  
04:23 15 truck here. You know, it just it didn't make sense, you know.  
16 I couldn't, you know, and him being -- I had asked him several  
17 times to remove his hands from his pockets. He kept putting  
18 his hands in his pockets and he couldn't stop them moving, and  
19 those were the inconsistencies that I saw and that's when I  
04:23 20 contacted the other superiors.

21 Q. You did what? I'm sorry?

22 A. I contacted one of my superiors and advised him what I  
23 had.

24 Q. And what happened next?

04:23 25 A. So after that I made contact with my Communications and

1 advised them to send me a canine; and the canine, Border Patrol  
2 canine arrived about 15 or 20 minutes after I requested it.

3 Q. What happened then?

4 A. The dog did a walk-around. The agent walked around with  
04:24 5 the dog. The dog did not alert.

6 Q. What happened then?

7 A. After that we contacted Sergeant Roger Dixon, which is our  
8 narcotics supervisor.

9 Q. What did he do?

04:24 10 A. He showed up at my scene, and then after that he made  
11 contact with the driver and started talking to the driver. I  
12 really don't know what they spoke about; but after Roger came  
13 back to me he said that Sergeant Dixon gave -- that the driver  
14 gave consent to go search, do an X-ray on the truck/tractor  
04:24 15 semi-trailer at the port of entry here in Del Rio.

16 Q. So what happened next?

17 A. We, Roger rode with the driver to the POE. I followed the  
18 driver; and as we are arrived to the POE we had U.S. Customs  
19 agents do the X-ray on the truck/tractor semi-trailer.

04:25 20 Q. Did you personally see that X-ray?

21 A. Yes, sir, I did.

22 Q. I'm showing you a photograph marked Government's Exhibit  
23 8. Do you recognize that (indicating)?

24 A. That is a picture of the X-ray.

04:25 25 Q. Okay. I'm showing you now Government's Exhibit 9. What

1 is that?

2 A. That is a picture of the truck/tractor semi-trailer. And  
3 when I was there and we were there and they showed us this  
4 picture they were telling us that there was something not right  
04:25 5 where this arrow is at right here where the arrow is  
6 indicating. There was something not right, that there was a  
7 bulk, something bulky in that area (indicating).

8 Q. Okay. What happened next?

9 A. After that so we had several agents on top of that area;  
04:25 10 and what they did is they were trying to cut, because it is  
11 plywood. And normally on your flatbed trailers you have  
12 plywood on top of that; but this one was different. It had  
13 plywood on the top; but underneath that plywood was metal.

14 Q. Let me stop you for a second.

04:26 15 A. Okay.

16 Q. I show you a photograph marked Government's Exhibit 22.  
17 What is that (indicating)?

18 A. There you go. You have the plywood which is normal on all  
19 your flatbeds; but if you once you tear those plywood apart you  
04:26 20 will just see there is metal there, and I have never seen a  
21 metal container like that (indicating).

22 Q. Okay. Let me show you Government's Exhibit 24. Describe  
23 that (indicating).

24 A. That's that metal plate, which was I would say maybe being  
04:26 25 conservative maybe a quarter of inch thick, a metal plate.

1 Q. Okay. Let me also show you Government's Exhibit 26. What  
2 is that (indicating)?

3 A. That was once the agents, you know, were able to pry that  
4 wood or the plywood they used some sort of saw and they cut  
04:27 5 through that steel metal plate.

6 Q. Okay. I think this is a little bit backwards in time.  
7 But Government's Exhibit 27, what is that (indicating)?

8 A. Okay. That was narcotics that was found in that plate.

9 Q. Okay. Can you point to the narcotics?

04:27 10 A. Right here (indicating). That's one of the bags or the  
11 bricks, as you can say. And there's another one right here,  
12 and there's some right here, there (indicating). It was loaded  
13 all over that box. I would say that from that, you know, just  
14 to give you an idea, I think it was maybe 4x4, maybe four feet  
04:27 15 across or wide.

16 Q. Does this photograph, Government's 27 show the metal piece  
17 that you are talking about?

18 A. Yes, it does. This was the metal plate that was right  
19 there that had to be pried open or cut with some steel saw that  
04:27 20 the agents had there at their facility.

21 Q. Explain what cavity that is. What is that emptiness? Is  
22 that a natural void in the trailer?

23 A. Some of the flatbeds do, should have that, that void.  
24 They normally they all have them; but I had never seen the  
04:28 25 steel on a flatbed like that. Normally right here where this,

1 where the narcotics are right here that's where you have your  
2 service lines that come through here, and there will be two  
3 holes in the front where when water comes in it will come out;  
4 but in this case this was completely covered. I mean it was a  
04:28 5 good concealment method. I had never seen it before.

6 Q. So the cavity is natural; but the metal piece was added?

7 A. No, the metal piece was not normal.

8 Q. Okay. I'm showing you Government's Exhibit -- let me back  
9 up. Did you witness the bundles being pulled out of there?

04:28 10 A. Yes, sir, I did.

11 MR. GYIRES: Your Honor, I'm not sure how to take the  
12 markings off. Can I do that, or is that only --

13 THE COURT: I just did it.

14 MR. GYIRES: Okay. But am I --

04:28 15 THE COURT: You should be able to do it; but I've --

16 MR. GYIRES: Okay. It doesn't actually --

17 THE COURT: -- got it here in front of me.

18 MR. GYIRES: -- show up on mine.

19 THE COURT: Okay.

04:28 20 MR. GYIRES: But that's okay.

21 Q. (BY MR. GYIRES) Government's Exhibit 29, what is that  
22 (indicating)?

23 A. Those are the bundles that were retrieved from the area  
24 that we were searching.

04:29 25 Q. And who is that in the photo (indicating)?

1 A. That would be me.

2 Q. Okay. I'm also showing you -- I'm going to show you a  
3 sample from what is marked as Government's Exhibit 1.

4 MR. GYIRES: May I approach the witness, Your Honor?

04:29 5 THE COURT: You may.

6 Q. (BY MR. GYIRES) I'm showing you a bundle that has been  
7 removed from Government's Exhibit 1. Do you recognize this  
8 (indicating)?

9 A. Yes, sir.

04:29 10 Q. What is it?

11 A. That was the contraband that was found inside the  
12 semi-trailer. This was the cocaine.

13 MR. GYIRES: Your Honor, may I publish it to the jury  
14 so they can see it, show it to them?

04:30 15 THE COURT: You can show it; but don't give it to  
16 them. Not that I don't trust the jury.

17 (LAUGHTER.)

18 THE COURT: But we'll keep the chain of custody  
19 intact.

04:30 20 Q. (BY MR. GYIRES) Approximately how many bundles were there  
21 total?

22 A. I would have to guess. I mean I'm going to say over 100,  
23 120.

24 Q. Okay. You didn't count them yourself?

04:30 25 A. No. The narcotics agents counted the bundles; but it was

1 about 120, 130 bundles.

2 MR. GYIRES: May I have just one moment, Your Honor?

3 THE COURT: You may.

4 (Mr. Gyires and Mr. Galdo confer.)

04:31 5 THE COURT: Go ahead.

6 Q. (BY MR. GYIRES) Backing up to the very beginning, I think  
7 the only thing I forgot to ask was why were you out there in  
8 the first place?

9 A. At the county line?

04:31 10 Q. Yes. Why did you stop this vehicle?

11 A. We stopped this vehicle because we had a BOLO.

12 Q. What is a BOLO?

13 A. Which means "Be On the Look Out." Intel had advised us  
14 that there was a truck/tractor semi-trailer matching the  
04:31 15 description of this vehicle possibly loaded with narcotics.  
16 They didn't know where; but there was a lookout.

17 Q. Okay. Thank you.

18 MR. GYIRES: I pass the witness, Your Honor.

19 THE COURT: Mr. Martinez.

04:31 20 MR. MARTINEZ: Thank you, Your Honor.

21 CROSS EXAMINATION

22 Q. (BY MR. MARTINEZ) My name is Ralph Martinez. I represent  
23 Mr. Castaneda. Good afternoon, sir.

24 A. Good afternoon, sir.

04:32 25 Q. How long was Mr. Cortinas, I guess, in your custody?



1 A. In my custody? Throughout the whole traffic stop and the  
2 time that Border Patrol arrived and the time we took the X-ray,  
3 I would say about an hour.

4 Q. Okay. And the stories he gave you, his destinations and,  
04:32 5 you know, the whole conversation you had with him, you would  
6 characterize it, wouldn't you, as his attempts to conceal the  
7 load he had?

8 A. Probably so. The way, the inconsistencies, yes, and the  
9 body language, yes.

04:33 10 Q. And he also knew you were a police officer; right?

11 A. Yes, sir.

12 Q. He never told you he had the dope; did he?

13 A. No.

14 Q. You found it?

04:33 15 A. We found it. We asked him if he had anything in the  
16 vehicle and he said "I don't have anything in there. You're  
17 not going to find anything."

18 Q. Okay. So basically to sum it up, he lied to you  
19 throughout the incident?

04:33 20 A. Yes, he lied.

21 Q. And in the conversations that you had with him did he ever  
22 mention anything about Mr. Castaneda?

23 A. No, sir, he never mentioned. I never heard that name.

24 MR. MARTINEZ: Thank you.

04:33 25 THE COURT: Mr. Gyires.

1 MR. GYIRES: No more questions, Your Honor.

2 THE COURT: You may step down.

3 THE WITNESS: Thank you.

4 THE COURT: Call your next witness.

04:34 5 MR. GALDO: Your Honor, the government calls Roger  
6 Dixon.

7 (OATH ADMINISTERED.)

8 THE WITNESS: I do.

9 MR. GALDO: May I proceed, Your Honor?

04:35 10 THE COURT: You may. Mr. Dixon, you might need to  
11 sit closer to that microphone.

12 THE WITNESS: Yes, ma'am.

13 DIRECT EXAMINATION

14 Q. (BY MR. GALDO) Sir, can you please state and spell your  
04:35 15 name for the record?

16 A. It's Roger Dixon, R-o-g-e-r D-i-x-o-n.

17 Q. And, sir, what is your current occupation?

18 A. I am a Texas Ranger assigned to Company Unit El Paso.

19 Q. What is a Texas Ranger?

04:35 20 A. We investigate most felony crimes assigned to the state  
21 for investigation.

22 Q. How long have you been with the Rangers?

23 A. One month.

24 Q. One month. And where were you before you were a Texas  
04:35 25 Ranger?

1 A. I was a narcotics agent here in Del Rio.

2 Q. With what organization?

3 A. DPS.

4 Q. And what were your -- what are your assignments and duties  
04:36 5 as a narcotics agent?

6 A. Investigate crimes involving narcotics laws of the State  
7 of Texas.

8 Q. And about how many, approximately how many narcotics  
9 investigations were you a part of?

04:36 10 A. Hundreds.

11 Q. And how long were you with DPS total?

12 A. Sixteen years, 10 in narcotics.

13 Q. Sir, I want to direct your attention to Sunday, February  
14 24, 2008, around 1:40 p.m.

04:36 15 A. Yes, sir.

16 Q. Do you recall where you were at that date in time? I know  
17 that was a few years ago.

18 A. I was on Highway 90. The address was 11664 West Highway  
19 90, a storage building.

04:36 20 Q. And where is that in relation to Del Rio?

21 A. West of Del Rio near Lake Amistad.

22 Q. I'm showing you Government's Exhibit 5. Do you recognize  
23 that (indicating)?

24 A. Yes, sir.

04:37 25 Q. What is that (indicating)?

1 A. That's Lake Amistad.

2 Q. And do you see the area of Highway 90 you are referring  
3 to?

4 A. Yes, sir.

04:37 5 Q. And where is that? If you could, I think you can just, as  
6 described, "John Madden" it. You can touch it. Did you --

7 THE COURT: Touch it hard.

8 THE WITNESS: There (indicating).

9 Q. (BY MR. GALDO) Did you circle it?

04:37 10 A. Yes, sir.

11 Q. Is that showing up?

12 THE COURT: Yes, it is.

13 MR. GALDO: It doesn't show up here.

14 Q. (BY MR. GALDO) And what were you doing at that date and  
04:37 15 time?

16 A. I was conducting surveillance on a white Volvo  
17 truck/tractor.

18 Q. And, sir, did you see that Volvo truck/tractor there?

19 A. Yes, sir.

04:37 20 Q. Were there any other truck tractors there?

21 A. No, sir.

22 Q. I'm showing you Government's Exhibit 12. Do you recognize  
23 that (indicating)?

24 A. That's the truck/tractor, sir, I was watching.

04:38 25 Q. Did that truck/tractor remain at the warehouse?

1 A. At approximately 1:30 it parked, drove to the front of  
2 warehouse. The front door was lifted up. It backed partially  
3 inside, and a short time later it departed pulling or hauling a  
4 flatbed trailer.

04:38 5 Q. And that area around that warehouse, are you familiar with  
6 that area?

7 A. Yes, sir.

8 Q. I'm showing you Government's Exhibit 31. And what is that  
9 (indicating)?

04:38 10 A. That's a closer picture of the lake area, Highway 90.

11 Q. And the arrow with the lettering with the words "Stash  
12 WHSE," what does that indicate?

13 A. That's the location where that warehouse was at where we  
14 were conducting surveillance where the truck/tractor was  
04:38 15 parked.

16 Q. And there is also an area labeled "boat dock." Are you  
17 familiar with that area?

18 A. Yes, sir.

19 Q. What is Government's 33 (indicating)?

04:38 20 A. That's the boat dock near the warehouse. I believe it is  
21 called Diablo East.

22 Q. So you said it was around 1:40 or 1:30?

23 A. 1:30, approximately 1:30 when the truck/tractor  
24 repositioned itself to the front of the warehouse and about  
04:39 25 1:40, 1:45 when it departed.

1 Q. And 35, do you recognize (indicating)?

2 A. Yes, sir. That's the address or the warehouse where I  
3 conducted surveillance.

04:39 4 Q. And does this picture show where the truck was positioned,  
5 repositioned to?

6 A. If you are looking at the picture, it would be more on the  
7 left. There is an alleyway and it was parked there.

8 Q. After it repositioned did it stay at the warehouse?

9 A. It was at the front of the warehouse for a very short  
04:39 10 period of time.

11 Q. And where did it go? Or what did it do after it was at  
12 the front of the warehouse?

13 A. It departed and went on 90 going back towards Del Rio, and  
14 me and the other officers continued to follow it, and I --

04:40 15 Q. What, if anything, was attached to the truck?

16 A. The flatbed trailer.

17 Q. Sorry to interrupt. You said you were following it. Did  
18 you communicate with anyone else?

19 A. Yes, sir. I had other officers there assisting the  
04:40 20 surveillance.

21 Q. And what happened with that flatbed truck?

22 A. I arranged for the trooper to get it stopped.

23 Q. And do you know who that trooper was?

24 A. Trooper Esteban Luna.

04:40 25 Q. Now I want to direct your attention to 3:30, a little

1 later in the day. Do you recall where you were at that time?

2 A. We were at the county line at Val Verde and Kinney County,  
3 and Trooper Luna had already had stopped the truck and was  
4 doing an inspection on it.

04:40 5 Q. And that truck that was stopped, how does that truck  
6 compare to the truck you saw at the warehouse?

7 A. It was the same one, sir.

8 Q. Now did you interact with the truck driver at all at that  
9 time?

04:40 10 A. Not until approximately 3:30, 2:45 Trooper Luna asked me  
11 to come up, and we examined the front part of the trailer.

12 Q. And what did you notice when you examined it?

13 A. That right by the kingpin area where the truck actually  
14 attached to the -- the trailer actually attaches to the  
04:41 15 truck/tractor there was no weep holes. It looked like it was  
16 modified, and Trooper Luna also noticed some handprints on the  
17 skid plate of the truck/tractor.

18 Q. After those irregularities were noticed what happened?

19 A. We asked and I believe that was when we had written  
04:41 20 consent from the driver to search it further.

21 Q. And where did you search it further?

22 A. We drove it to the bridge where we could have a VACCIS  
23 radar X-ray machine X-ray the truck.

24 Q. And how exactly did you ride from the location of the stop  
04:41 25 to the location where the VACCIS X-ray was conducted?

1 A. I drove in the truck with the driver. I sat in the  
2 passenger seat.

3 Q. What communications did you have while you were in the  
4 trailer with him?

04:42 5 A. We just passed casual conversation. I was trying to build  
6 rapport with him.

7 Q. And what forms of communication did the driver have on  
8 him?

9 A. He had a phone. I believe it rang while we were at the  
04:42 10 traffic stop on the way back.

11 Q. And did he answer the phone?

12 A. No, sir. I asked his permission to just not use it, and  
13 it was placed on the dash of the truck while we were driving it  
14 back into town.

04:42 15 Q. After you arrived at the port of entry where were you  
16 while the search or while the X-ray was going on?

17 A. I stayed with the driver.

18 Q. And do you know what was found in the trailer?

19 A. It was 142 small bundles of cocaine wrapped in brown tape.  
04:42 20 It was in the same location that we saw the handprints, the  
21 weep holes that were covered up.

22 COURT REPORTER: Where you saw the handprints and  
23 what?

24 THE WITNESS: The weep holes.

04:42 25 COURT REPORTER: Okay.



1 THE WITNESS: The weep holes that were covered up.

2 Q. (BY MR. GALDO) Now you said you were with the driver.

3 What was the driver's name again?

4 A. Aurelio Cortinas.

04:43 5 Q. And what type of conversations, without saying what he  
6 said, what type of conversations did you have with him?

7 A. I don't recall the exact conversations; but they weren't  
8 really involving the truck. We were just trying to, you know,  
9 pass the day. We suspected there was drugs there and we were  
04:43 10 just trying to, like I said, build rapport with him. That way  
11 if we did find something, it would be easier to talk to him.

12 Q. After the narcotics were found what did you discuss?

13 A. We took him to our office, the DPS office in Del Rio and  
14 accompanied by Agent Pritchard with DEA, and read him his  
04:43 15 rights and interviewed him there.

16 Q. After speaking with him did he stay at the DPS office?

17 A. No. He started cooperating, and we drove out to the lake  
18 at Highway 90 and he pointed out the warehouse where he picked  
19 up the flatbed trailer.

04:43 20 Q. Now at this point had you communicated to him that you  
21 knew, that you were watching the warehouse?

22 A. He was unaware that we were surveilling.

23 Q. And did you drive straight to the warehouse?

24 A. No. I was a passenger in the vehicle. Special Agent  
04:44 25 Pritchard drove. We just drove all the way to dam just past

1 the warehouse, turned around, and on the way back he pointed  
2 that out.

3 Q. Now based on that interaction with Cortinas what decision  
4 was made?

04:44 5 A. Special Agent Pritchard requested a search warrant,  
6 federal search warrant of that warehouse.

7 Q. And what is a search warrant?

8 A. A search warrant is a Court Order authorizing a search  
9 based on probable cause authorizing the search of a specific  
04:44 10 place for a specific item.

11 Q. And can you just describe -- or was that search conducted?

12 A. Yes, sir, later on that morning.

13 Q. And about how many people were there when the search was  
14 conducted?

04:44 15 A. It was approximately 20 people from our agency, one Border  
16 Patrol agent or agent and his dog and DEA.

17 Q. And where were you? Can you describe your role in that  
18 search?

19 A. I was at the door when we entered the door. The first  
04:45 20 picture we saw of the warehouse there is an almost identical  
21 door and a large door in the back. The walk-in door had the  
22 hinges on the outside, so we pulled the pins and that's how we  
23 gained access, took the door off and then went in.

24 Q. Were there windows on the door?

04:45 25 A. There was windows on the pedestrian door on the back and

1 the front; but they were covered with tin with a little peep  
2 hole.

3 Q. So after you took the hinges off the door what did you do?

4 A. Well, after I took the hinges off the door most of the  
04:45 5 guys went in and I followed suit.

6 Q. Could you describe the interior of the warehouse?

7 A. It is probably half the size wider than this courtroom and  
8 just a little bit longer. Long enough if you can imagine an  
9 18-wheeler or semi-trailer parked sufficiently on both ends so  
04:46 10 you could walk around easily.

11 Q. And were there any other vehicle -- were there any  
12 vehicles or modes of transportation inside the warehouse?

13 A. There were three boats in the warehouse. As I entered  
14 from the back door there were two boats, two boats on the  
04:46 15 right, a boat and trailer on the left, and then there was an  
16 empty space in the center where the semi trailers would park.

17 Q. Now I want to direct your attention to if you could  
18 specifically talk about the what you saw inside the warehouse.  
19 What were you doing during the search of the warehouse?

04:46 20 A. We tried to -- we cleared the room of any threat. There  
21 was nobody there; and then everybody started searching in a  
22 systematic fashion, and most of the agents and officers there  
23 were looking at the boats. And when I was walking around I  
24 noticed other items like Bondo, grease, tools all consistent  
04:47 25 with maintaining a hidden compartment or construction of a

1 hidden compartment.

2 Q. I'm going to show you Government's Exhibit 37. Do you  
3 recognize that (indicating)?

4 A. Yes, sir.

04:47 5 Q. And what is that?

6 A. That's two cans of dog spray. It is a training aid. It  
7 is dog repellant, yes.

8 Q. This is 38 (indicating)?

9 A. Yes, sir. And there were two tubes of grease and there  
04:47 10 were some blades for a sawzaw in that bag.

11 Q. Now were there any dogs inside the warehouse?

12 A. No, sir.

13 Q. And you said you conducted surveillance earlier that day.  
14 Did you see any dogs around that area?

04:47 15 A. There were no dogs in the area.

16 Q. I'm showing you 39. Do you recognize that (indicating)?

17 A. That looks like one of the boats that was in the  
18 warehouse.

19 Q. Now did you inspect any of the boats in the warehouse?

04:48 20 A. I did a cursory look at them. All the other agents and  
21 officers were kind of honing in on the boat, so I kind of  
22 stayed back and watched.

23 Q. And you said they were honing in on a boat. Is  
24 Government's Exhibit 39 is that a picture of that boat  
04:48 25 (indicating)?

1 A. I believe so. Without looking at the plate and comparing  
2 it to my report, I believe that is the boat that they actually  
3 found the contraband.

04:48 4 Q. You said they found the contraband. Can you talk a little  
5 bit about that? Was it just lying on the boat? How did they  
6 find the contraband?

7 A. No. As we were looking for the contraband one of the  
8 agents, and I don't recall his name, stated he found what  
9 appeared to be a seam in front of the housing where the  
04:49 10 steering wheel is, and it looked like it had been like somebody  
11 had cut something and tried to cover it back up and it was like  
12 a bump.

13 Q. That's Government's Exhibit 45. Does that show that area  
14 he was talking about (indicating)?

04:49 15 A. Roughly. It is difficult to see on the picture; but you  
16 could see and feel it. It looked like there was a seam there  
17 that wasn't on the other boats.

18 Q. Now what did they do? Did you witness the search of that  
19 area?

04:49 20 A. Off and on as they were trying to get into it. I think  
21 they ended up using a saw to cut through the floor of the boat.

22 Q. What else were you doing while they were conducting that  
23 search with the saw?

24 A. During the search I started taking notes and drawing a  
04:49 25 diagram of the warehouse and the boats and stuff that I saw.

1 MR. GALDO: I'm showing counsel what has been marked  
2 as Government's Exhibit 80.

3 (MR. MARTINEZ REVIEW GOVERNMENT'S EXHIBIT 80.)

4 MR. MARTINEZ: Thank you.

04:50 5 MR. GALDO: Your Honor, permission to approach the  
6 witness?

7 THE COURT: You may.

8 Q. (BY MR. GALDO) Ranger Dixon, I've just handed you what has  
9 been marked as Government's Exhibit 80. Do you recognize that  
04:50 10 (indicating)?

11 A. Yes, sir. That's my bag I put the dog repellants in.

12 Q. And if you wouldn't mind, could you open it up? I know it  
13 is just a sealed brown bag. Could you open that up for me? I  
14 know there is tape involved.

04:51 15 A. Do you have a pair of scissors?

16 (SCISSORS PROVIDED BY COURTROOM DEPUTY.)

17 THE WITNESS: Thank you, ma'am.

18 (RANGER DIXON OPENS EXHIBIT 80.)

19 Q. (BY MR. GALDO) For the record, Ranger Dixon is opening up  
04:51 20 the bag and reaching inside with his gloves on. Can you tell  
21 me what is inside that bag?

22 A. It is one of the cans of spray located at the warehouse.

23 Q. Are there any markings in terms of ways to identify that  
24 on the can?

04:51 25 A. I didn't mark the can because we were saving it for prints

1 and looking at it. I can see where somebody at the lab circled  
2 where they had retrieved prints from.

3 Q. Is there a number on the bag that you took it out of, an  
4 evidence number?

04:51 5 A. Yes, 5.001.

6 Q. And who gave that item that number?

7 A. I assigned that number when I was writing my report to  
8 label the pieces of evidence that we took out of that  
9 warehouse.

04:52 10 Q. And is that can, is there a number on the can?

11 A. Again, the numbers on the can would be put on there by the  
12 lab. We didn't want to touch it. We just marked them and put  
13 two in there initially.

14 Q. Can you please, looking at it now, can you see a number on  
04:52 15 it?

16 A. I don't have any glasses. I think it says "A" on it. I  
17 know it is the one that says A because it is the one they found  
18 the prints off, because we looked at it earlier.

19 Q. Could you please place it back inside the bag?

04:52 20 A. Yes, sir.

21 MR. GALDO: May I approach, Your Honor?

22 THE COURT: You may.

23 MR. GALDO: Your Honor, at this time the government  
24 moves to introduce Government's Exhibit 80 into evidence.

04:53 25 MR. MARTINEZ: No objections, Your Honor.

1 THE COURT: You said 80?

2 MR. GALDO: 80, Your Honor.

3 MR. GYIRES: It is not on the list.

04:53 4 MR. GALDO: It is not on the list. It is an  
5 additional one.

6 THE COURT: Why is it not on the list?

7 MR. GALDO: Oversight, Your Honor.

8 THE COURT: So admitted. Proceed.

9 Q. (BY MR. GALDO) Now, Ranger Dixon, I want to direct your  
04:53 10 attention back to the search of that boat.

11 A. Yes, sir.

12 Q. I'm showing you 46. What is that (indicating)?

13 A. That's the hull of the boat after they cut the hole  
14 through the deck.

04:53 15 Q. And then 48, what is that (indicating)?

16 A. That's the same picture from a different angle showing the  
17 bundles are still in the hull.

18 Q. And try one more. 49 (indicating)?

19 A. I think that's where they stuck the camera inside the hole  
04:53 20 to take pictures of some that were still left in the void.

21 MR. GALDO: Permission to approach the witness, Your  
22 Honor?

23 THE COURT: You may.

24 Q. (BY MR. GALDO) Ranger Dixon, I've just showed you two  
04:54 25 items in my hand when I walked close to you. Do you recognize



1 those (indicating)?

2 A. Those appear to be the type of bundles we pulled out of  
3 the storage or the void in that boat.

04:54 4 Q. And do you recall how many bundles were taken out of that  
5 boat?

6 A. The boat had 123, if my memory is correct, so about 320  
7 pounds worth.

8 Q. For the record, I've just got five of them today. And how  
9 many did you say there were again?

04:55 10 A. 123.

11 Q. Ranger Dixon, what did you do with Exhibit 80, that can?

12 A. Later we tagged it, bagged it and then submitted it to the  
13 lab at a later date for latent print examination.

04:55 14 Q. And do you recall? You wrote reports about this case;  
15 correct?

16 A. Yes, sir.

17 Q. Do you recall the case number given to this case?

18 A. M4B7080010, that's my report number.

04:56 19 MR. GALDO: The government passes the witness, Your  
20 Honor.

21 THE COURT: Mr. Martinez.

22 MR. MARTINEZ: Yes, ma'am. Thank you, Your Honor.

23 CROSS EXAMINATION

04:56 24 Q. (BY MR. MARTINEZ) Good afternoon, Ranger Dixon. My name  
25 is Ralph Martinez. I represent Mr. Castaneda.

1 A. Good afternoon, sir.

2 Q. How long were you surveilling the warehouse?

3 A. That day at 11:30 on the 24th is when I started the  
4 surveillance. We had watched it the day before.

04:57 5 Q. Okay. But you had never, other than that day -- did you  
6 say the day before as well?

7 A. Yes, sir.

8 Q. You had never seen that warehouse before that?

9 A. I had seen it. I work the area. I had seen it.

04:57 10 Q. Okay. Did you when you started actually surveilling  
11 that's when you had a suspicion about it; correct?

12 A. Based on Special Agent Pritchard's information on the  
13 warehouse.

14 Q. Did you ever suspect there might be a problem at the  
04:57 15 warehouse before the day before?

16 A. No, sir.

17 Q. The same thing with the truck, was that the first time you  
18 every saw the truck?

19 A. Yes, sir.

04:57 20 Q. All right. You spoke to -- who was driving the truck?  
21 Did you speak to the driver?

22 A. Yes, sir, Aurelio Cortinas.

23 Q. And did he tell you -- how long did you interview him?

24 A. I was with him since around 3:30, and I want to say  
04:58 25 approximately 5:00 o'clock is when we started interviewing him;

1 and I think we actually spoke with him throughout the night  
2 even to the point where we started, Special Agent Pritchard  
3 started drafting the probable cause affidavit.

4 Q. So he then took you to the warehouse and showed you  
04:58 5 around; right? Mr. Cortinas; correct?

6 A. He drove us by the warehouse and that was the last thing.

7 Q. So how long would you say you were talking to him?

8 A. 3:30 to probably six hours. That's an estimate about,  
9 because I know it was getting dark when we drove by the  
04:59 10 warehouse.

11 Q. After talking to him and based on your activity that day  
12 did you do anything after that day that focused on Mr.  
13 Castaneda?

14 A. No, sir, I did not.

04:59 15 Q. Okay. So at least after that day you had not heard of  
16 Mr. Castaneda; correct?

17 A. Sometime during the course of the three years --

18 Q. No. I'm talking about that day.

19 A. Oh, that day? No, sir.

04:59 20 MR. MARTINEZ: Nothing else. Thank you, sir.

21 THE COURT: Mr. Galdo.

22 MR. GALDO: No redirect, Your Honor.

23 THE COURT: You may step down. Does anybody on the  
24 jury need a break, coffee or anything?

04:59 25 JURY PANEL: (NOD NEGATIVELY.)

1 THE COURT: No? All right. Call your next witness.

2 MR. GALDO: Before that, Your Honor, the government  
3 would like to read into evidence a stipulation.

4 THE COURT: You may do so. Mr. Dixon, you may step  
05:00 5 down.

6 THE WITNESS: Thank you, Your Honor.

7 MR. GALDO: May I proceed, Your Honor?

8 THE COURT: Go ahead.

9 MR. GALDO: In the case of the United States vs. Luis

05:00 10 Roel Castaneda, stipulation: It is hereby stipulated and  
11 agreed between the United States of America through the  
12 undersigned Assistant United States Attorney and Defendant Luis  
13 Roel Castaneda and his attorney Ralph Martinez in open court  
14 that if a forensic chemist were to testify in court in this  
05:00 15 case, the testimony would confirm beyond a reasonable doubt  
16 that the substances tested in connection with this case which  
17 are marked Government's Exhibit 1 and 2 are in fact cocaine, a  
18 Schedule II controlled substance.

19 The cocaine that is marked as Government's Exhibit 1 was  
05:00 20 removed by law enforcement officers in Del Rio, Texas on  
21 February 24, 2008, from a flatbed tractor/trailer bearing Texas  
22 registration number X45-452 which was attached to a white Volvo  
23 tractor/truck displaying Texas registration number 2FF-962.

24 The parties stipulate that Government's Exhibit 1 is a  
05:01 25 portion of the cocaine seized from the tractor/trailer and is

1 admissible as evidence in the government's case in chief during  
2 the trial of this case.

3 The cocaine that is marked as Government's Exhibit 1 was  
4 removed by law enforcement officers on February 25, 2008, from  
05:01 5 a fishing boat displaying Texas boat registration number  
6 TX-8638AF which was located inside a metal warehouse located at  
7 11664 West Highway 90, Del Rio, Texas.

8 The parties stipulate that the Government's Exhibit 2 is a  
9 portion of the cocaine seized from the boat and is admissible  
05:01 10 as evidence in the government's case in chief during the trial  
11 of this case.

12 It is further stipulated that the total amount of cocaine  
13 seized on February 24th and 25th, 2008, in relation to this  
14 case has a total net weight of about 280 kilograms.

05:02 15 Approximately 140 kilograms were removed from the flatbed  
16 trailer and approximately 140 kilograms were removed from the  
17 boat. Signed by all parties.

18 THE COURT: It has been preadmitted. You may  
19 proceed.

05:02 20 MR. GYIRES: The government calls Aurelio Cortinas.

21 (OATH ADMINISTERED.)

22 THE WITNESS: I don't speak English.

23 (OATH ADMINISTERED VIA SPANISH INTERPRETATION.)

24 THE WITNESS: I do.

05:03 25 DIRECT EXAMINATION

1 Q. (BY MR. GYIRES) Good afternoon, sir. Can you please  
2 state your name for the record.

3 A. Aurelio Cortinas.

4 THE COURT: Just a second, Mr. Gyires. Both of you  
05:03 5 gentlemen are going to have to speak louder. Mr. Cortinas, I  
6 know you are speaking in Spanish; but I still need for you to  
7 speak loudly into the microphone. You are not speaking to the  
8 interpreter. You are speaking to everyone in the courtroom.  
9 Proceed.

05:03 10 Q. (BY MR. GYIRES) Say your name again, please.

11 A. Aurelio Cortinas.

12 Q. Are you currently incarcerated?

13 A. Yes.

14 Q. Did you plead guilty to possession of cocaine with intent  
05:04 15 to distribute?

16 A. Yes.

17 Q. You did that pursuant to a plea agreement?

18 A. Yes.

19 Q. Do you know what your sentence was?

05:04 20 A. Six and a half years.

21 Q. Seventy-eight months; correct?

22 A. Yes.

23 Q. How were you caught?

24 A. A state trooper stopped me for a routine inspection on my  
05:05 25 trailer like right on 90 Brackettville bound, and when they

1 were done with all the search the officer asked me if he could  
2 take me over to the bridge for an X-ray check.

3 Q. What happened next?

4 A. Over there at the bridge after the X-ray inspection is  
05:06 5 when they found a hidden compartment in the trailer.

6 Q. Were you arrested that day?

7 A. Yes.

8 Q. Was that February 24th, 2008?

9 A. That is correct.

05:06 10 Q. Were you working by yourself or for an organization?

11 A. For an organization.

12 Q. Who would you say was your most immediate boss? And you  
13 can use a nickname.

14 A. Down in Mexico, or in the United States?

05:07 15 Q. Both.

16 A. Pajaro.

17 Q. How long did you work for this organization?

18 A. For 10 months.

19 Q. So you started in approximately when?

05:07 20 A. April or May of 2007.

21 Q. What was your role in that organization?

22 A. Transportation of cocaine.

23 Q. How?

24 A. On a flatbed.

05:08 25 Q. Let me show you a photograph that is marked Government's

1 Exhibit 11. Do you recognize that (indicating)?

2 A. That's my truck.

3 Q. When you say "your truck," was it did you purchase it?

4 A. No. It belonged to the organization.

05:08 5 Q. Whose name was it registered in, if you know?

6 A. Cortinas Trucking.

7 Q. Whose name was on the paper as the owner of that tractor?

8 A. Aurelio Cortinas.

9 Q. That's you; right?

05:09 10 A. That is correct.

11 Q. Where did you drive that tractor/truck from when you  
12 transported cocaine?

13 A. From Del Rio to Houston.

14 Q. Was it always from Del Rio?

05:09 15 A. No.

16 Q. Where else was it from?

17 A. Roma, Texas.

18 Q. I'm showing you a photograph marked Government's Exhibit

19 6. Is that a fair representation of Del Rio, Houston and Roma  
05:10 20 (indicating)?

21 A. That is correct.

22 Q. Did you know you were transporting cocaine?

23 A. Yes.

24 Q. Did you ever transport any other drugs?

05:10 25 A. No.



1 Q. Did you have any other role in the operation of this  
2 organization?

3 A. I would bring in drugs over Amistad Dam.

4 Q. With what vehicle?

05:11 5 A. On a boat.

6 Q. What kind of boat?

7 A. A boat.

8 Q. What sort of boat? A fishing boat, a sailboat?

9 A. A fishing boat.

05:11 10 Q. I'm showing you a document, a photograph that's marked as  
11 Government's Exhibit 36. Do you recognize that (indicating)?

12 A. Yes.

13 Q. What is that (indicating)?

14 A. That's a boat that was inside the warehouse where we would  
05:12 15 do the switch.

16 Q. How many times did you personally drive a boat across the  
17 lake?

18 A. Seven or eight times.

19 Q. I'm showing you a document marked Exhibit 39. Do you  
05:13 20 recognize that (indicating)?

21 A. Yes.

22 Q. What is it?

23 A. That's the boat that I would use.

24 Q. So you personally drove this boat?

05:13 25 A. Yes.

1 Q. I'm showing you a document marked Government's Exhibit 35.  
2 Do you recognize that?

3 A. Yes.

4 Q. What is that?

05:13 5 A. That's the warehouse where the boat and the drugs would  
6 be.

7 Q. Approximately where is that located?

8 A. That's right around 90 on the way out of Del Rio right  
9 near the bridge to go across the dam.

05:14 10 Q. I'm showing you Government's 32. Before I ask you  
11 anything about this, how far was the boat dock from that stash  
12 house?

13 A. No more than a mile.

14 Q. Is Exhibit 32 a fair representation of the map  
05:15 15 representing the warehouse and the boat dock, if you recognize  
16 it?

17 A. Yes.

18 Q. I'm going to show you Government's Exhibit 31. I don't  
19 know if that is more helpful or not. Is that about the same  
05:15 20 (indicating)?

21 A. It is the same.

22 Q. How often, how many times did you drive the  
23 tractor/trailer loaded with cocaine to Houston?

24 A. Between 17 and 19 times.

05:16 25 Q. Let me ask you a few more questions about your trips

1 across the lake. How did that generally happen? What is the  
2 first thing you did to begin your trip across the lake?

3 A. We would go down, make them believe we were going out  
4 fishing, and we would cross over to the Mexican side. In  
05:16 5 Mexico we would get another boat which was identical to this  
6 one, so we would only switch. If I was bringing in money into  
7 Mexico, I would go in with the boat that was not loaded with  
8 drugs, and then I would switch to the other one loaded with  
9 drugs into the United States.

05:17 10 Q. Did you go at nighttime or daytime?

11 A. Daytime.

12 Q. Who did you go with, if anybody? And you can use  
13 nicknames.

14 A. I did go once with Chaparro, and the other times I would  
05:18 15 go with this person we used to call Neto.

16 Q. Who -- and let me ask the question again for clarity.  
17 Would it be fair to say you had a supervisor or a boss or not?

18 A. Yes.

19 Q. Who was it on the Mexican side?

05:18 20 A. Max.

21 Q. And how long did you work for him?

22 A. For the eight or 10 months that I was working for them.

23 Q. Did you say you also took cash back into Mexico?

24 A. That is correct.

05:19 25 Q. How was the cash packaged?

1 A. Bundles of cash. That's all.

2 Q. Did you have a name for those bundles?

3 A. They were marked; but I don't recall what they were marked  
4 as.

05:19 5 Q. How do you know you were transporting cash back?

6 A. The person in Houston would let me know that I was  
7 bringing down cash to Del Rio or to Roma.

8 Q. Let me ask you about your tractor/trailer. Where was the  
9 cocaine inside that tractor/trailer?

05:20 10 A. It was in a compartment where the kingpin is located. It  
11 was worked up so that it could be removed, and in there were  
12 stashed the money or the drugs.

13 Q. Did you always go to Houston?

14 A. That is correct.

05:21 15 Q. Were there any other warehouses involved or just this one?

16 A. There was another one in Houston.

17 Q. How were you paid?

18 A. Cash down in Mexico.

19 Q. Did you receive any amount of money from anybody else?

05:21 20 A. I don't understand the question.

21 Q. I'll get back to the money in a little bit. Let me ask  
22 you about with your first, how you first got involved with  
23 transporting cocaine. Describe how you first got involved, the  
24 very first thing that happened.

05:22 25 A. Well, in Mexico at my mom's house a lifetime friend came

1 down. He knew that I did have a transportation company in the  
2 United States. He asked me if I knew some tractor/trailer  
3 driver with a residence in the United States who would agree to  
4 put a tractor/trailer under his name.

05:23 5 Q. What did you say?

6 A. At the moment I told him "No, I did not know anyone;" but  
7 personal problems led me to go and search for him and tell him  
8 that I would take care of that.

9 Q. Generally what sort of personal problems?

05:24 10 A. Separation from my wife, and I went down to live in  
11 Mexico.

12 Q. Where in Mexico?

13 A. Piedras Negras.

14 Q. So describe what happened next.

05:24 15 A. I let them know that I was willing to work for them, so it  
16 took them about two hours to talk to -- I don't know to whom.  
17 So he came back to me with money and with -- how can I say it?  
18 With an address in Houston for me to pick up the truck.

19 Q. So tell us about your first load. About when was that?  
05:25 20 June of 2007?

21 A. Around April.

22 Q. Okay. I might have done my math wrong. What happened  
23 first, that first time?

24 A. That friend comes to my house and tells me that there is  
05:25 25 work to be done. At the time I did not have that truck

1 registered or anything.

2 Q. So what did you do?

3 A. This person, this friend takes me to this other person in  
4 Piedras Negras, Max. And Max brings me up into Del Rio where  
05:26 5 there is another truck hitched to another trailer.

6 Q. What happened next?

7 A. That night is when I met Chaparro.

8 Q. Let me show you a photograph that is marked Government's  
9 Exhibit 64. Do you recognize this (indicating)?

05:27 10 A. Yes, sir.

11 Q. Can you describe what this is?

12 A. That's Chaparro's picture.

13 Q. Is that your initial next to his photograph?

14 A. Yes.

05:27 15 Q. How were you presented this entire photo lineup?

16 A. I don't understand.

17 Q. Were you asked to pick Chaparro out of that lineup?

18 A. They were showing pictures to me for me to identify  
19 people.

05:28 20 Q. Did they tell you who to point to?

21 A. No.

22 Q. So what happened after you met Chaparro at the warehouse  
23 that first time?

24 A. That day I came by and the trailer was already loaded; but  
05:28 25 the truck was not working, so not until the following day in

1 the morning is when we left for Houston.

2 Q. Why wasn't the truck working?

3 A. It had a flat tire.

4 Q. So what did you do the next day the first thing?

05:29 5 A. We did work on repairing the tire.

6 Q. And then what?

7 A. We drove all day to Houston.

8 Q. When you say "we" was someone else in your tractor?

9 A. No. I was driving my tractor and Chaparro was driving his  
05:29 10 truck.

11 Q. Did you see the cocaine loaded?

12 A. No, not at that time.

13 Q. Okay. So what happened next as you were driving?

14 A. When we got to Houston Chaparro parked by a Home Depot  
05:30 15 right around Houston, and we were waiting for Pajaro to arrive  
16 to let us know where we were going to be unloading.

17 Q. I'm showing you a photograph marked Government's Exhibit

18 65. Do you recognize this (indicating)?

19 A. That's Pajaro.

05:31 20 Q. And describe how this photo lineup took place.

21 A. In the same fashion that they did with the one with  
22 Chaparro, they were showing me pictures for me to identify  
23 people in the organization.

24 Q. Did they tell you who to point to?

05:31 25 A. No.

1 Q. Do you see Pajaro in the courtroom today?

2 A. No.

3 Q. Can you stand up and look?

4 A. He's not here.

05:32 5 Q. Do you need -- do you have eyeglasses?

6 MR. MARTINEZ: I'm going to object, Your Honor.

7 THE COURT: Counsel, he said --

8 MR. MARTINEZ: Asked and answered.

9 THE COURT: -- he didn't see him.

05:32 10 MR. GYIRES: I don't know if the record -- can I  
11 approach, Your Honor?

12 THE COURT: You may.

13 (ON-THE-RECORD BENCH CONFERENCE, TO WIT:)

14 MR. GYIRES: I don't know if he can see from the  
05:32 15 witness stand. There is a screen in front of him.

16 THE COURT: You can speak normally.

17 MR. GYIRES: There is a screen in front of him.

18 MR. MARTINEZ: The thing is he doesn't recognize him  
19 because he has only seen him from a photo is my contention; and  
05:33 20 if he gets close, you basically run the risk of suggesting to  
21 him.

22 THE COURT: Well, here is my question: From the  
23 photo lineup, your client has also had physical changes; right?  
24 He shaved his head?

05:33 25 MR. MARTINEZ: Yes, he has.



1 MR. GYIRES: And he's behind the TV screen.

2 THE COURT: Well, let's do this, Mr. Gyires. Let's  
3 establish if he can see everybody well enough before I ever let  
4 him do anything else. If he says he can see all parties well  
05:33 5 enough, then you have got your identification.

6 MR. GYIRES: How do I develop that --

7 THE COURT: Just ask him.

8 MR. GYIRES: -- so I don't suggest anything?

9 THE COURT: Just ask him "Can you see everybody  
05:33 10 within this courtroom properly?" Just, you know, Can you see  
11 all the bodies properly if you stand up? Do you all the  
12 bodies" --

13 MR. GYIRES: Can I say "Do you see the defendant?"

14 THE COURT: No. I'm telling you what to say, Mr.  
15 Gyires. Listen.

16 MR. GYIRES: "Can you see all the parties."

17 THE COURT: "Can you see everybody in this courtroom  
18 fine without any obstruction or interference?" Let's start off  
19 with that.

05:34 20 (BENCH CONFERENCE CONCLUDED.)

21 Q. (BY MR. GYIRES) Can you see everybody in the courtroom  
22 properly?

23 A. (Shrugs.)

24 THE COURT: Stand up.

05:34 25 THE WITNESS: (Complied.)

1 THE COURT: Now there are people in the courtroom.  
2 Can you see everybody fine without any kind of obstruction or  
3 interference?

4 THE WITNESS: Yes.

05:34 5 THE COURT: Go ahead.

6 Q. (BY MR. GYIRES) Can you see me?

7 A. Uh-huh (yes).

8 THE COURT: "Yes" or "no"?

9 THE WITNESS: Yes.

05:35 10 Q. (BY MR. GYIRES) Can you see everyone sitting at the other  
11 table?

12 A. Yes.

13 Q. How many people do you see at my table?

14 A. Three people.

05:35 15 Q. How many at the other table?

16 A. Two people.

17 Q. Let me ask you a question. You can sit back down.

18 A. (Complied.)

19 Q. I'm showing you again Government's 65. Did Pajaro always  
05:35 20 have a full head of hair?

21 MR. MARTINEZ: I'm going to object, Your Honor. I'm  
22 going to object that the witness has been asked already.

23 THE COURT: This a different question, Mr. Martinez.  
24 He's not asking him to identify any person in the courtroom.

05:35 25 Q. (BY MR. GYIRES) Did Pajaro always have a full head of

1 hair?

2 A. Yes.

3 Q. Did he always have a mustache?

4 A. Yes. And he was fat like that.

05:36 5 Q. About what do you think he weighed?

6 A. Two hundred pounds.

7 Q. Okay. What happened next after you met Pajaro that day?

8 A. He took us to a place to unload.

9 Q. To where?

05:36 10 A. It was -- I don't remember the place. He was leading us  
11 driving a pickup truck.

12 Q. And describe the place where you arrived.

13 A. It was a house; but it had like a large property and there  
14 was a shop there.

05:37 15 Q. What did you do when you arrived?

16 A. I got there and I did park the trailer and I did unhitch  
17 the trailer from the tractor.

18 Q. Then what happened?

19 A. Between Chaparro and Pajaro they removed the kingpin to  
05:38 20 extract the cocaine that was inside.

21 Q. Did you personally see them doing that?

22 A. Yes.

23 Q. What did you see next?

24 A. They loaded the drugs into a van that they were carrying  
05:38 25 and then they dropped me off at the hotel and they left me

1 there.

2 Q. Did they know you saw them unload the cocaine?

3 A. Yes.

4 Q. Did you think they trusted you?

05:38 5 A. At that time, yes.

6 Q. Who took you to the hotel?

7 A. Both Pajaro and Chaparro.

8 Q. Did you overhear their conversations?

9 A. No. I was riding behind them.

05:39 10 Q. Did you overhear them while they were unloading the  
11 cocaine?

12 A. Yes.

13 Q. How would you describe those conversations?

14 A. They were only talking about the quantity and they were  
05:40 15 making reports about the quantity that had arrived; and they  
16 were talking about personal things because they knew each  
17 other. I do not know what they were talking about.

18 Q. And you're talking about Pajaro and Chaparro?

19 A. That is correct.

05:40 20 Q. What happened after you got to the hotel?

21 A. No. They just left me in there, and I did spend three or  
22 four days until some money came and I could go back down.

23 Q. Who gave you the money?

24 A. Pajaro put it inside like the stash for the trailer.

05:41 25 Q. Do you mean hidden cash is what you would take back?

1 A. Yes.

2 Q. Did you see Pajaro load that cash?

3 A. He would be the one to do it always.

4 Q. Did you ever actually see him do it?

05:41 5 A. Yes.

6 Q. About how many times?

7 A. Thirteen, 12 times.

8 Q. How did you communicate with all these people involved in  
9 the organization generally?

05:42 10 A. I would only talk to them when I would be heading to  
11 Houston only to agree about ETAs or what time I would get  
12 there.

13 Q. How would you do that? With a phone?

14 A. That is correct.

05:43 15 Q. Did you-all just have one phone number, or did you have  
16 several phone numbers?

17 A. There were several phone numbers for Pajaro. I can't  
18 recall whether it was three of them. And Chaparro had two  
19 numbers.

05:43 20 Q. Explain how the organization used phones.

21 A. They were nothing explicit. We would do it the  
22 conventional way. We would dial. That's it.

23 Q. Was the phone registered in your name?

24 A. I don't understand that.

05:44 25 Q. What kind of phones did you have? Did you have prepaid

1 phones or did you have an account with a company or what?

2 A. I had a prepaid one and I had a T-Mobile.

3 Q. Is there any reason you used a prepaid phone?

4 A. Just to talk openly about the drugs.

05:45 5 Q. What do you mean by that?

6 A. Well, just to say "I'm about to arrive. I am bringing in  
7 the cocaine" openly like that.

8 Q. How does having a prepaid phone help that?

9 A. Because it is not registered under your name.

05:45 10 Q. Did you usually keep a number for a long time or switch  
11 numbers?

12 A. The prepaid one would be changed often.

13 Q. Why did you change it often?

14 A. You do it to protect yourself when the federals are  
05:46 15 following up on those numbers. That's all.

16 Q. Do you remember what, how you had Pajaro's phone number?  
17 You said you had more than one phone number on your phone; is  
18 that correct?

19 A. Yes. Chaparro gave it to me, and then when he would  
05:46 20 switch numbers he would give me the new numbers.

21 Q. How was Pajaro's number labeled in your phone?

22 A. Just like that, "Pajaro." That's it.

23 Q. Do you know Pajaro's real name?

24 A. No.

05:47 25 Q. Who -- did anyone ever pay you in Houston?

1 A. They would give me money for expenses.

2 Q. Who did?

3 A. Pajaro.

4 Q. How many times did he give you money?

05:47 5 A. I don't recall.

6 Q. More than once?

7 A. More than 10 times.

8 Q. How were you paid? In cash?

9 A. Yes.

05:48 10 Q. What type of bills?

11 A. Twenties and hundreds.

12 Q. Were you also paid a salary?

13 A. No. I was being paid by the trip.

14 Q. How much was that?

05:48 15 A. Between \$20,000 and \$25,000.

16 Q. Where were you paid? Where were you present when you were  
17 paid?

18 A. Down in Mexico.

19 Q. Who delivered it to you?

05:49 20 A. Sometimes Max would do it or Max would send people with  
21 the money.

22 Q. How often did you come out -- of your 15, 16 or 17 loads  
23 how many times did you bring back cash hidden in the secret  
24 compartment?

05:49 25 A. Thirteen or 14 times.

1 Q. Out of your all of your trips how many times did you see  
2 Pajaro in Houston?

3 A. All the time.

4 Q. Was this organization associated with any drug cartel in  
05:50 5 Mexico?

6 A. The Cartel of the Gulf.

7 Q. Is that the Gulf Cartel?

8 A. Yes.

9 Q. Do you know any other drivers in the organization?

05:51 10 A. Yes.

11 Q. Who?

12 A. Barrientos.

13 Q. Do you know his first name?

14 A. No.

05:51 15 Q. How many times did you see him in person?

16 A. Twice.

17 Q. Where?

18 A. Once in Houston and once in Del Rio.

19 Q. Did you have a nickname?

05:52 20 A. Pajaro would call me "brother."

21 Q. Were you ever stopped by law enforcement any other time or  
22 just on February of 2008?

23 A. Only in February.

24 Q. You were never pulled over any other time?

05:52 25 A. I was arrested once before in Eagle Pass for a ticket.



1 Q. So no law enforcement officer ever tried to find cocaine  
2 in any of your other loads?

3 A. No.

4 Q. You were never pulled over by -- while you were driving  
05:53 5 your tractor/trailer were you ever pulled over?

6 A. No.

7 MR. GYIRES: May I have just one moment, Your Honor?

8 THE COURT: You may.

9 (MR. GALDO AND MR. GYIRES CONFER.)

05:54 10 Q. (BY MR. GYIRES) Let me show you another photograph. This  
11 one is marked as Government's Exhibit 68. Do you recognize  
12 this (indicating)?

13 A. That's Barrientos.

14 Q. Are those your initials next to his photograph?

05:54 15 A. Yes.

16 Q. Did the agents showing you this photograph tell you that  
17 was Barrientos before you initialed it (indicating)?

18 A. No.

19 Q. Let's talk just briefly about your plea agreement in this  
05:55 20 case. You received a 78-month sentence; right?

21 A. Yes.

22 Q. And at your sentencing hearing did the government help you  
23 get a lower sentence at that time?

24 A. Yes.

05:56 25 Q. And was that because you were -- why was that? Why did

1 the government recommend a lower sentence at your sentencing  
2 hearing?

3 A. Because I did cooperate with them.

4 Q. Do you remember testifying in Grand Jury?

05:56 5 A. That is correct.

6 Q. Do you remember your plea agreement with the government?

7 A. No.

8 Q. You don't remember signing a plea agreement?

9 A. Yes.

05:56 10 Q. And as part of that plea agreement the government -- let  
11 me show it to you.

12 MR. GYIRES: Your Honor, it is not marked. Do I need  
13 to mark it if I want to show it to him to refresh his memory?

14 THE COURT: It is up to you.

05:57 15 (MR. GYIRES AND MR. MARTINEZ CONFER.)

16 MR. GYIRES: May I approach the witness, Your Honor?

17 THE COURT: You may.

18 Q. (BY MR. GYIRES) I'm showing you a plea agreement in your  
19 case. Do you recognize this (indicating)?

05:57 20 A. Yes. That's my signature.

21 Q. As part of this plea agreement did the government agree to  
22 make known to the Court any cooperation that you provide to the  
23 government?

24 A. Yes.

05:58 25 Q. But that cooperation has to be truthful, doesn't it?

1 A. That is correct.

2 Q. Are you telling the truth today?

3 A. Yes.

4 Q. Are you scared?

05:58 5 A. Yes.

6 Q. Why?

7 A. Because I'm going to have problems when this is over.

8 Q. What sort of problems?

9 MR. MARTINEZ: I'm going to object to that. Your  
05:59 10 Honor, may I approach the Court?

11 THE COURT: Approach.

12 (ON-THE-RECORD BENCH CONFERENCE, TO WIT:)

13 MR. MARTINEZ: I would --

14 THE COURT: You can speak normally.

05:59 15 MR. MARTINEZ: Okay. I would object to any testimony  
16 that the witness might give, "in fear for his life." There is  
17 no evidence my client ever threatened him or will threaten him.  
18 It is pure speculation and it is just going to imply my client  
19 is some kind of a threat or has made threats.

05:59 20 MR. GYIRES: I don't want to make that implication.  
21 Maybe my question might be more appropriate on redirect when  
22 his credibility is at issue, to test it or rebut and any  
23 implication that he's not telling the truth.

24 THE COURT: I think it would be fine now, Mr. Gyires,  
06:00 25 if you would make clear that it is not his client that he is

1 worried about. He is just worried about general reprisals.  
2 Because I think it is a pretty safe bet and it's a pretty  
3 obvious situation that people that cooperate and testify are  
4 not going to be in the same position as those who don't in  
06:00 5 terms of possible retribution from an organization.

6 If you will just clarify that you have no information that  
7 it's this defendant that he is worried about, just the  
8 organization generally, I'll allow you to ask it at this time  
9 if you want; but we need to clear it up that it is not Mr.  
06:00 10 Martinez's client, that there is no evidence that it's Mr.  
11 Martinez' client that is a direct threat.

12 MR. MARTINEZ: It is up to the government and  
13 yourself, of course. If it's easier for the government --

14 THE COURT: Actually, Mr. Martinez, in my Court it is  
06:00 15 never up to the government. It is always up to the Court.

16 MR. MARTINEZ: I caught myself. I figured that out  
17 now.

18 (LAUGHTER.)

19 MR. MARTINEZ: We can make a stipulation, if you will  
06:01 20 allow it, that he could say that. I don't have a problem with  
21 him making that pronouncement to the jury.

22 THE COURT: That he is worried about his safety.

23 MR. MARTINEZ: Or that my client had nothing to do  
24 with and he has no evidence of specific threats; and then he  
06:01 25 can go on and ask --

1 THE COURT: That's not going to be a stipulation; but  
2 what we need to make sure is that the witness is clear that he  
3 has fear for his life. And, Mr. Gyires, I'll let you follow-up  
4 with a leading question that he's not suggesting that it is  
06:01 5 this defendant.

6 MR. GYIRES: Or somebody in this courtroom.

7 THE COURT: Yes, somebody in this courtroom.

8 MR. GYIRES: Or should I say "this defendant"?

9 THE COURT: You can say "this courtroom" or "this  
06:01 10 defendant," --

11 MR. GYIRES: Okay.

12 THE COURT: -- because that's the main thing.

13 MR. MARTINEZ: Right.

14 (BENCH CONFERENCE CONCLUDED.)

06:01 15 MR. GYIRES: May I proceed?

16 THE COURT: You may.

17 Q. (BY MR. GYIRES) Are you afraid of people in Mexico?

18 A. Yes.

19 Q. You're not afraid of somebody in this courtroom hurting  
06:02 20 you; right?

21 A. No.

22 Q. Why are you afraid of the people in Mexico?

23 A. Because I am testifying against someone, against an  
24 organization in Mexico.

06:02 25 MR. GYIRES: May I have another brief moment, Your

1 Honor?

2 THE COURT: You may.

3 (MR. GYIRES AND MR. GALDO CONFER.)

06:03 4 MR. GYIRES: May I briefly approach the Court with  
5 one quick question?

6 THE COURT: You may.

7 (ON-THE-RECORD BENCH CONFERENCE, TO WIT:)

8 MR. GYIRES: Isn't voice identification an option?

9 THE COURT: It always is.

06:03 10 MR. GYIRES: If I say "Out of all the people you  
11 dealt with if someone spoke in the courtroom, would you be able  
12 to identify them?" And then --

13 THE COURT: Yes, it is possible; but you have got to  
14 lay the predicate.

06:03 15 MR. MARTINEZ: Right.

16 THE COURT: Lay the predicate that he can, that he  
17 would be able to identify and it would be a particular person's  
18 voice and if he heard it again.

19 MR. GYIRES: But I just don't want to put the words.  
06:04 20 I don't want to say "If you heard Pajaro's voice" and then ask  
21 him to talk.

22 THE COURT: Then don't lead him. Just ask him "Did  
23 you ever speak to Pajaro before on the telephone or in person?"  
24 "Yes." "If you heard his voice again, would you be able to  
06:04 25 recognize it? How many times did you hear it?"

1 MR. GYIRES: Should I do it with somebody else first  
2 just so we are not? No?

3 THE COURT: How would you being do it with somebody  
4 else if you want this person to be the one that identifies him?

06:04 5 MR. MARTINEZ: What if he says "Yes," Your Honor?  
6 What if he says "Yes"? Part of the predicate would be to  
7 establish familiarity with the voice.

8 THE COURT: Sure. He has got to establish the  
9 predicate that he is familiar, how many times he talked to the  
06:04 10 person, if he would be able to recognize the voice again if he  
11 talked to him again and he heard his voice. Keep in mind  
12 Mr. Gyires doesn't know the answer to his question.

13 MR. GYIRES: Right.

14 MR. MARTINEZ: But if he says "Yes," maybe I don't  
06:05 15 know. He has got a purpose and I should know and I don't know.

16 THE COURT: I am assuming, and this is my assumption,  
17 Mr. Gyires. That if this man says "I talked to Pajaro quite a  
18 bit," he talked to Pajaro quite a bit and he could recognize  
19 the voice and if he had heard it again, he would be able to  
06:05 20 recognize it, then Mr. Gyires is going to ask or have your  
21 client get up and read something. Let's find something neutral  
22 that he can read just for the voice so that this witness can  
23 hear the voice. And then Mr. Gyires is going to ask him "Based  
24 on the voice, can you identify this person" is what I am  
06:05 25 assuming is where we're going.

1 MR. MARTINEZ: The problem with that though is if he  
2 stands up again, would that be suggesting?

3 THE COURT: He wouldn't be standing. It is going to  
4 be suggestive; but the only thing I can do is at that point is  
06:05 5 find a way to cover the witness from hearing who is doing the  
6 speaking so that he can't see that it is your client speaking.

7 MR. MARTINEZ: Can we do that?

8 THE COURT: Sure. We can cover him from his view so  
9 that he can't see who the person speaking is.

06:06 10 MR. MARTINEZ: So he "cannot"?

11 THE COURT: Cannot.

12 MR. MARTINEZ: That's it.

13 MR. GYIRES: Can I have 30 seconds to think about if  
14 I want to do that?

06:06 15 THE COURT: Okay.

16 MR. GYIRES: Ten seconds.

17 THE COURT: Hurry up, because I'm going to give --  
18 let me do this: Let me give the jury a break while you hash  
19 this out.

06:06 20 MR. GYIRES: All right. Thank you.

21 (BENCH CONFERENCE CONCLUDED.)

22 THE COURT: Ladies and gentlemen of the jury, I don't  
23 know about you-all; but I think I'm going to need a break right  
24 now while we take care of some matters. So let me go ahead and  
06:06 25 let you, excuse you to go to the jury room for just a few



1 minutes.

2 (JURY OUT.)

3 THE COURT: Let's take a short break while you-all  
4 discuss it. Just have a seat, Mr. Cortinas. That's his name,  
06:07 5 Mr. Cortinas (indicating)?

6 MR. MARTINEZ: Yes.

7 THE COURT: Don't speak to anyone. We are in a short  
8 recess.

9 (RECESS.)

06:33 10 THE COURT: Okay. Let me get on the record in  
11 DR-10-CR-361; United States of America vs. Defendant Number 2  
12 Luis Roel Castaneda. All parties are present including the  
13 defendant. Mr. Gyires, you are not going to do the experiment  
14 we were talking about here at the bench?

06:33 15 MR. GYIRES: Correct, Your Honor.

16 THE COURT: Do you have more questions?

17 MR. GYIRES: I have one or two more questions of this  
18 witness.

19 THE COURT: Here is my inclination at that point: To  
06:34 20 recess for the day. This jury has actually been here since  
21 7:30 this morning. I would recess for the day. Mr. Martinez,  
22 you would begin with cross examination in the morning.

23 MR. MARTINEZ: Yes, ma'am.

24 THE COURT: No one could have any contact with Mr.  
06:34 25 Cortinas between now and the morning, and I would so admonish

1 the witness when we finish for the day. My suggestion is we  
2 wrap it up for the day.

3 MR. GYIRES: Yes, Your Honor.

4 THE COURT: Do you want to check and see if the  
06:34 5 jurors are ready?

6 COURT SECURITY OFFICER: Yes, they are.

7 THE COURT: Let's bring in the jury.

8 (JURY IN.)

9 THE COURT: You may be seated. Mr. Gyires, you were  
06:35 10 on direct.

11 Q. (BY MR. GYIRES) Just a couple of more questions: Who is  
12 in charge of your sentence?

13 A. I don't know.

14 Q. Is it the judge? Is it the government?

06:35 15 A. The judge.

16 Q. Has the government made you any promises?

17 A. No. Nothing.

18 MR. GYIRES: Pass the witness, Your Honor.

19 THE COURT: I'm anticipating we are going to have  
06:35 20 quite a lengthy cross examination, and I know you have been  
21 here since at least 7:30 this morning. My inclination at this  
22 point is to go ahead and recess for the day and have you come  
23 back at 9:30 and pick up at that time.

24 Remember my instructions. Do not investigate this case.  
06:36 25 Do not investigate the law. Don't look anything up on the

1 internet. Don't read or listen or talk to anyone about it. Do  
2 not talk to each other about it, because that would be a form  
3 of deliberation and you can't do it at this point. I will see  
4 you tomorrow at 9:30. You may be excused.

06:36 5 (JURY OUT.)

6 THE COURT: Mr. Cortinas, the defense attorney is  
7 going to begin at 9:30 in the morning with cross examination.  
8 He has the right now to make sure that no one talks to you  
9 about your testimony between the direct examination by Mr.  
06:37 10 Gyires and when he starts asking you questions. Do not speak  
11 to anyone, not agents, not people at GEO, not the attorneys,  
12 not anyone about your testimony until after you have been  
13 excused from testifying. And you're not yet excused. Do you  
14 understand?

06:37 15 THE WITNESS: Yes.

16 THE COURT: All right. You may be excused as well.

17 MR. MARTINEZ: Thank you, Your Honor.

18 THE COURT: Marshals, you may take him.

19 MR. GYIRES: Can I advise of Court of one thing?

06:38 20 THE COURT: Go ahead.

21 MR. GYIRES: The government, in light of his  
22 testimony, might add one quick witness tomorrow, a custodian of  
23 records from the DPS license.

24 THE COURT: Was he on your witness list? If he  
06:38 25 wasn't, you didn't voir dire this jury panel on it.

1 MR. GYIRES: That's true, Your Honor. The testimony  
2 would only be to prove up --

3 THE COURT: That wasn't my question.

4 MR. GYIRES: No, he was not on the witness list.

06:39 5 THE COURT: We have not voir dired the jury.

6 MR. GYIRES: Can we do that?

7 THE COURT: Let's say six people would say "yes" and  
8 "it would affect them."

9 MR. GYIRES: Then I wouldn't call them.

06:39 10 THE COURT: Why are you calling a custodian of  
11 records if all the exhibits have been introduced?

12 MR. GYIRES: We would like to introduce the  
13 photograph associated with the defendant's drivers license  
14 photo to show the photo he was looking at, to show the photo he  
06:39 15 was looking at was in fact the defendant.

16 THE COURT: Did anybody seize his driver's license  
17 when he was arrested?

18 MR. GYIRES: I don't know if we have his driver's  
19 license. He was in jail in Mississippi.

06:39 20 THE COURT: When he was arrested.

21 MR. GYIRES: We pulled him out of the Mississippi  
22 jail. The marshals also have a database that shows photos when  
23 they booked him. That would be another thing we may try to do  
24 is show photographs of the defendant to show that is him.

06:40 25 THE COURT: Mr. Martinez, do you have any objection

1 to the drivers license coming in?

2 MR. MARTINEZ: Actually I don't. I don't see the  
3 relevance; but if he wants to do that.

4 THE COURT: Do you have any objection to the driver's  
06:40 5 license, photocopy of it being introduced as an exhibit?

6 MR. MARTINEZ: No.

7 THE COURT: Would you need to call a witness?

8 MR. MARTINEZ: With a custodian, I would never object  
9 to a custodian.

06:40 10 THE COURT: Okay.

11 MR. GYIRES: We also have another, a different.  
12 There are different, numerous photographs.

13 THE COURT: Mr. Gyires, find a drivers license  
14 picture with information you are wanting to introduce.

06:41 15 MR. GYIRES: This is it.

16 THE COURT: Show it to Mr. Martinez. He said he  
17 would agree to its admission without a custodian to testify.

18 MR. GYIRES: It is the same photo.

19 THE COURT: Listen to what I'm telling you. He is  
06:41 20 willing to allow it without a custodian. If that's the case,  
21 you are not going to have to call a witness to show he is  
22 custodian.

23 MR. GYIRES: Okay. Then this is Exhibit 81  
24 (indicating).

06:41 25 THE COURT: Then it is so admitted. Okay. So you

1 don't need to add a witness to your witness list.

2 MR. GYIRES: Correct. Just one exhibit to the  
3 exhibit list.

4 THE COURT: I just added it to mine. If anybody  
06:41 5 needs to add it to theirs, they can add it. Anything else?

6 MR. MARTINEZ: No, Your Honor.

7 THE COURT: Do you need to speak to your client  
8 before the marshals take him downstairs?

9 MR. MARTINEZ: No.

06:41 10 THE COURT: You may go with the marshals. We are in  
11 recess. If the attorneys need me, let Ms. Green know by 9:00  
12 o'clock. If not, I will be here about 9:15 and I will see you  
13 at 9:30.

14 MR. MARTINEZ: Thank you, judge.

06:42 15 (RECESS.)

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1 UNITED STATES DISTRICT COURT )  
2 WESTERN DISTRICT OF TEXAS )  
3

4 I, ANNA RENKEN LAFRENZ, Official Court Reporter  
5 for the United States District Court, Western District of  
6 Texas, do hereby certify that the foregoing is a correct  
7 transcript from the record of proceedings in the above matter.  
8

9 Certified to by me this 30th day of December,  
10 2011.  
11  
12  
13

14 /s/ Anna Renken Lafrenz, CSR, RPR

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